EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.

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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:

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Dated: New York, New York
September 24, 2003

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

IT IS SO ORDERED:

SHIRA A. SCHEINDLIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

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 | Pct. Of Occ.

Time Of Stop | Period Of Observation Prior To Stop | Radio Run/Sprint #

Address/Intersection Or Cross Streets Of Stop

☐ Inside ☐ Outside | ☐ Transit ☐ Housing | Type Of Location 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 Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
- ☐ 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)
- ☐ Actions Indicative Of Engaging In Drug Transaction.
- ☐ Furtive Movements.
- ☐ Actions Indicative Of Engaging In Violent Crimes.
- ☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.

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 ☐ Female | Race: ☐ White ☐ Black ☐ White Hispanic ☐ Black Hispanic ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native

Age | Height | Weight | Hair | Eyes | Build

Other (Scars, Tattoos, Etc.)

Did Officer Explain Reason For Stop ☐ Yes ☐ No | If No, Explain:

Were Other Persons Stopped/ Questioned/Frisked? ☐ Yes ☐ No | If Yes, List Pct. Serial Nos.

If Physical Force Was Used, Indicate Type:

- ☐ Hands On Suspect
- ☐ Suspect On Ground
- ☐ Pointing Firearm At Suspect
- ☐ Handcuffing Suspect
- ☐ Suspect Against Wall/Car
- ☐ Drawing Firearm
- ☐ Baton
- ☐ Pepper Spray
- ☐ Other (Describe)

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

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

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

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)

- ☐ Report From Victim/Witness
- ☐ Area Has High Incidence Of Reported Offense Of 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)
- ☐ Evasive, False Or Inconsistent Response To Officer's Questions
- ☐ Changing Direction At Sight Of Officer/Flight
- ☐ Ongoing Investigations, e.g., Robbery Pattern
- ☐ Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms

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 Richie 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.

----------x

PROTECTIVE ORDER

99 Civ. 1695
(SAS) (HBP)

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

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

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
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022

and Jonathan Moore, Esq.
William Goodman, Esq.
Moore & Goodman, LLP
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.

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)

COMMAND:_____ **Worksheet # 802**

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

DATE(s) OF EVALUATION:_____ PERIOD EVALUATED_____

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

COMMAND 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)

(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										

[Rev. 12/2002]

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	(Yes/No) Deficiency Noted
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)

(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:

_____

_____

_____

_____

_____

_____

_____

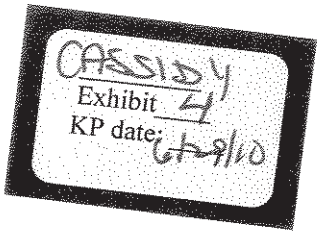
_____

_____

_____

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.

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

STOP, QUESTION AND FRISK REPORT WORKSHEET
PD344-151A (Rev. 11-02)

(COMPLETE ALL CAPTIONS)

Pct. Serial No.	Date	Pct. Occ.
Time Of Stop	Period Of Observation Prior To Stop	Radio Run/Sprint #

Address/Intersection Or Cross Streets Of Stop

☐ Inside ☐ Outside | ☐ Transit ☐ Housing | Type Of Location 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 Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
- ☐ 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)
- ☐ Actions Indicative Of Engaging In Drug Transaction.
- ☐ Furtive Movements.
- ☐ Actions Indicative Of Engaging In Violent Crimes.
- ☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.

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 ☐ Female | Race: ☐ White ☐ Black ☐ White Hispanic ☐ Black Hispanic ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native

Age	Height	Weight	Hair	Eyes	Build

Other (Scars, Tattoos, Etc.)

Did Officer Explain Reason For Stop ☐ Yes ☐ No | If No, Explain:

Were Other Persons Stopped/ Questioned/Frisked? ☐ Yes ☐ No | If Yes, List Pct. Serial Nos.

If Physical Force Was Used, Indicate Type:
- ☐ Hands On Suspect
- ☐ Suspect On Ground
- ☐ Pointing Firearm At Suspect
- ☐ Handcuffing Suspect
- ☐ Suspect Against Wall/Car
- ☐ Drawing Firearm
- ☐ Baton
- ☐ Pepper Spray
- ☐ Other (Describe)

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

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

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

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)

- ☐ Report From Victim/Witness
- ☐ Area Has High Incidence Of Reported Offense Of 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)
- ☐ Evasive, False Or Inconsistent Response To Officer's Questions
- ☐ Changing Direction At Sight Of Officer/Flight
- ☐ Ongoing Investigations, e.g., Robbery Pattern
- ☐ Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms

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.) | Tax#
Print _____ | Command _____
Signature _____

REVIEWED BY: Rank, Name (Last, First, M.I.) | Tax#
Print _____ | Command _____
Signature _____

EXHIBIT D

 OLD

005

STOP AND FRISK REPORT (Ref. P.G. 116-33)
PD 344-151 (8-84)-12

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 ☐ YES ☐ NO — IF NO, HOW IDENTIFIED ☐ SHIELD ☐ I.D. CARD ☐ BOTH — WAS FORCE USED ☐ YES ☐ NO — IF YES, DESCRIBE

WAS PERSON FRISKED ☐ YES ☐ NO — WAS SEARCH INSIDE CLOTHES MADE ☐ YES ☐ NO — IF YES, DESCRIBE WHERE MADE AND BASIS FOR INSIDE SEARCH

Was Weapon Found ☐ YES ☐ NO — IF YES, DESCRIBE

Was Other Contraband Found ☐ YES ☐ NO — IF YES, DESCRIBE

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

NYC 016341

EXHIBIT E

INTERIM ORDER

SUBJECT: REVISION TO PATROL GUIDE 212-11, "STOP AND FRISK"		
DATE ISSUED:	REFERENCE:	NUMBER:
04-23-09	P.G. 212-11	20

1. In order to ensure that individuals who are subject to a stop, question and/or possible frisk encounter by a uniformed member of the service receive an explanation for the stop, Patrol Guide 212-11, "Stop and Frisk" is being revised.

2. Therefore, effective immediately, Patrol Guide 212-11, "Stop and Frisk" is amended as follows:

a. **REVISE** step **"5"**, opposite "UNIFORMED MEMBER OF THE SERVICE", on page **"1"** to read:

"UNIFORMED MEMBER OF THE SERVICE	**5.**	**Release suspect immediately after completing the investigation if probable cause to arrest does not exist and provide suspect with an explanation for the stop, question and/or frisk encounter, absent exigent circumstances."**

3. In addition, uniformed members of the service assigned to the 32nd, 44th and 75th Precincts, after providing an explanation for the stop, question and/or frisk encounter, may provide the stopped individual with a tear off information card from a new **ACTIVITY LOG** insert entitled, "**WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?**" **(PD344-111)**. This insert consists of perforated cards and informs the individual of the legal authority for the stop and common reasons individuals are stopped by the police. The insert will be made available to the public online in six (6) languages at www.nyc.gov/nypd.

4. Under no circumstances will the issuance of the **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?** tear off card exempt members from completing a **STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)**, as required in *P.G. 212-11, "Stop and Frisk."*

5. The Patrol Services Bureau will ensure that the inserts are distributed to the 32nd, 44th and 75th Precincts. Commanding officers of these commands will ensure that **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? ACTIVITY LOG** inserts are made available to uniformed members of the service under their supervision for distribution to the public.

6. 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 F

INTERIM ORDER

SUBJECT: REVISION TO PATROL GUIDE 212-11, "STOP AND FRISK," PATROL GUIDE 204-09, "REQUIRED FIREARMS/ EQUIPMENT" AND ADMINISTRATIVE GUIDE 325-18, "COMMAND REFERENCE LIBRARY"		
DATE ISSUED:	REFERENCE:	NUMBER:
05-18-10	P.G. 212-11, P.G. 204-09 AND A.G. 325-18	21

1. Interim Order 20, series 2009, entitled, "Revision to Patrol Guide 212-11, 'Stop and Frisk'," introduced an **ACTIVITY LOG (PD112-145)** insert entitled, "**WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)**" for a pilot program in the 32nd, 44th and 75th Precincts. The pilot program was implemented so that a uniformed member of the service may provide the subject of a stop, question and/or frisk encounter with a **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?** tear off information card to explain the legal authority for the stop and common reasons why individuals are stopped by the police. Due to the success of this pilot program, it has been expanded to all commands citywide.

2. Therefore, effective immediately, Patrol Guide 212-11, "Stop and Frisk" is amended as follows:

a. **REVISE** step "**5**", opposite actor "UNIFORMED MEMBER OF THE SERVICE", on page "**1**" to read:

"**UNIFORMED MEMBER OF THE SERVICE**	**5.**	**Release suspect immediately after completing the investigation if probable cause to arrest does not exist and provide suspect with an explanation for the stop, question and/or frisk encounter, absent exigent circumstances.** **a. A WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111) tear off information card, may be provided to the stopped individual."**

b. **REVISE** "FORMS AND REPORTS", on page "**3**" to read:

"***FORMS AND REPORTS***	***ACTIVITY LOG (PD112-145)*** ***STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)*** ***STOP, QUESTION AND FRISK INDEX COVERSHEET (PD344-152)*** ***STREET ENCOUNTERS - LEGAL ISSUES (PD344-153)*** ***WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)***"

3. Accordingly, Patrol Guide 204-09, "Required Firearms/Equipment" is amended as follows:

a. **REVISE** step "12", opposite "REQUIRED EQUIPMENT", on page "3" to read:

"REQUIRED EQUIPMENT	12.	ACTIVITY LOG (PD112-145) with following inserts: a. AUTO IDENTIFICATION (PD371-090) b. COMPILATION OF SPANISH PHRASES (PD167-090) c. INSTRUCTIONS FOR HANDLING MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS (PD104-110) d. DOMESTIC VIOLENCE/VICTIMS OF CRIME (PD154-110) e. CORRUPTION HAZARDS IDENTIFICATION (PD427-011) f. COURTESY, PROFESSIONALISM AND RESPECT (PD439-111) g. STREET ENCOUNTERS – LEGAL ISSUES (PD344-153) h. POSSIBLE INDICATORS OF TERRORIST ACTIVITY (PD378-111) i. WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111) j. Any other insert, as required."

4. Additionally, Administrative Guide 325-18, "Command Reference Library" is amended as follows:

a. **REVISE** REFERENCE NUMBER "9", on page "3" to read:

"9	ACTIVITY LOG INSERTS AUTO IDENTIFICATION (PD371-090) COMPILATION OF SPANISH PHRASES (PD167-090) INSTRUCTIONS FOR HANDLING MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS (PD104-110) DOMESTIC VIOLENCE/VICTIMS OF CRIME (PD154-110) CORRUPTION HAZARDS IDENTIFICATION (PD427-011) COURTESY, PROFESSIONALISM AND RESPECT (PD439-111) STREET ENCOUNTERS – LEGAL ISSUES (PD344-153) POSSIBLE INDICATORS OF TERRORIST ACTIVITY (PD378-111) WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)"

b. **REVISE** "FORMS AND REPORTS", on page "**4**" to read:

"***FORMS AND REPORTS***	***INSTRUCTIONS FOR HANDLING MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS (PD104-110)*** ***AUTO IDENTIFICATION (PD371-090)*** ***COMPILATION OF SPANISH PHRASES (PD167-090)*** ***DOMESTIC VIOLENCE/VICTIMS OF CRIME (PD154-110)*** ***COURTESY, PROFESSIONALISM AND RESPECT (PD439-111)*** ***CORRUPTION HAZARDS IDENTIFICATION (PD427-011)*** ***STREET ENCOUNTERS - LEGAL ISSUES (PD344-153)*** ***POSSIBLE INDICATORS OF TERRORIST ACTIVITY (PD378-111)*** ***WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)***"

5. Commanding officers will ensure that required **ACTIVITY LOG** insert entitled, "**WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)**" is made available to ALL uniformed members of the service assigned to their commands for distribution to the public.

6. Commands will requisition the **ACTIVITY LOG** insert **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? (PD344-111)** through the Quartermaster Section as follows:

INDEX NUMBER	PD NUMBER	TITLE
2231	**344-111**	**WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?**

7. Interim Order 20, series 2009, is herby **REVOKED**.

8. 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

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EXHIBIT G

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

☐ Inside ☐ Outside | ☐ Transit ☐ Housing | Type Of Location *(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 Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
- ☐ 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)
- ☐ Actions Indicative Of Engaging In Drug Transaction.
- ☐ Furtive Movements.
- ☐ Actions Indicative Of Engaging In Violent Crimes.
- ☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.

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 ☐ Female | Race: ☐ White ☐ Black ☐ White Hispanic ☐ Black Hispanic ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native

Age | Height | Weight | Hair | Eyes | Build

Other (Scars, Tattoos, Etc.)

Did Officer Explain Reason For Stop ☐ Yes ☐ No | If 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 ☐ Hands On Suspect ☐ Baton
☐ 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

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**

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

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)

- ☐ Report From Victim/Witness
- ☐ Area Has High Incidence Of Reported Offense Of 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)
- ☐ Evasive, False Or Inconsistent Response To Officer's Questions
- ☐ Changing Direction At Sight Of Officer/Flight
- ☐ Ongoing Investigations, e.g., Robbery Pattern
- ☐ Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms

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.) _____ Tax# _____

Print _____

Signature _____ Command _____

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

Print _____

Signature _____ Command _____

EXHIBIT H

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.

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EXHIBIT I

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

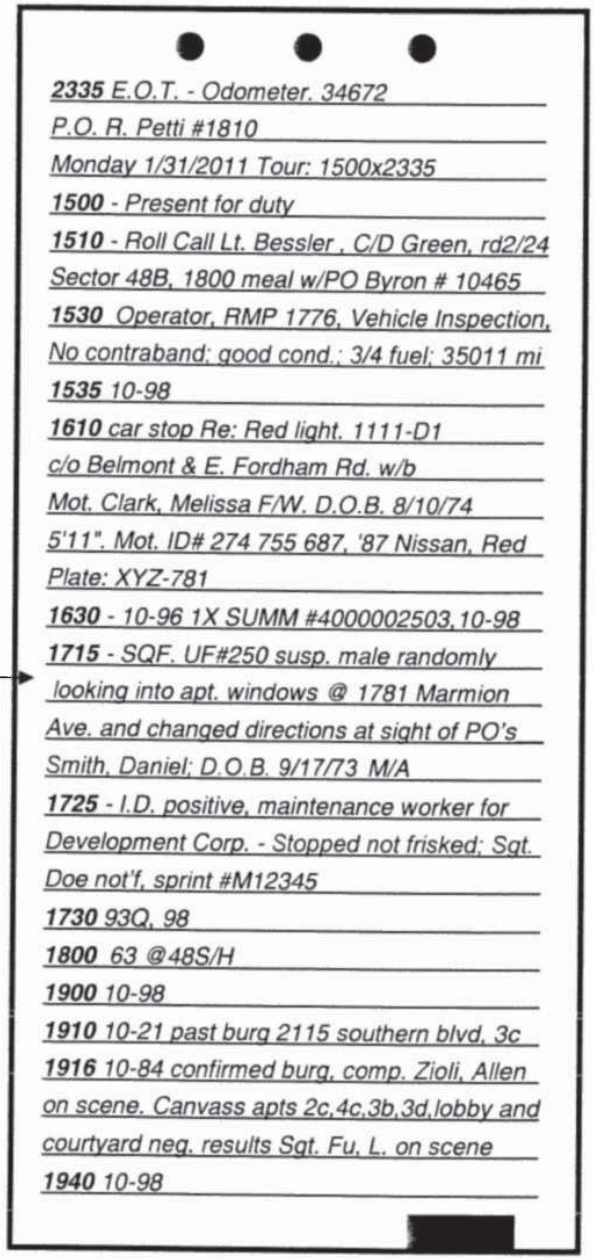
PATROL SERVICES BUREAU

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 Run/Sprint No.: M12345

Address/Intersection Or Cross Streets Of Stop: f/o 1781 Marmion Avenue , NY

☐ Inside ☒ Outside | ☐ Transit ☐ 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.
- ☐ Fits Description.
- ☐ Actions Indicative Of "Casing" Victim Or Location.
- ☐ Actions Indicative of Acting As A Lookout.
- ☐ Suspicious Bulge/Object (Describe)
- ☐ Actions Indicative Of Engaging In Drug Transaction.
- ☒ Furtive Movements.
- ☐ Actions Indicative Of Engaging In Violent Crimes.
- ☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.
- ☒ Other Reasonable Suspicion Of Criminal Activity (Specify): Turned at the sight of the police and kept looking back

Name Of Person Stopped	Nickname/Street Name	Date Of Birth
Smith, Daniel	Danny	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	Height	Weight	Hair	Eyes	Build
M	6'4	240	Black	Br	stocky

Other (Scars, Tattoos, Etc.)

Did Officer Explain Reason For Stop: ☒ Yes ☐ No | If 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 ☐ Hands On Suspect ☐ Baton ☐ 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?	Offense	Arrest No.
☐ Yes ☒ No		
Was Summons Issued?	**Offense**	**Summons No**
☐ Yes ☒ No		
Officer In Uniform? ☒ Yes ☐ No	If No, How Identified? ☐ Shield ☐ I.D. Card ☐ Verbal	

Was Person Frisked? ☐ Yes ☒ No **IF YES, MUST CHECK AT LEAST ONE BOX**
- ☐ Inappropriate Attire - Possibly Concealing Weapon
- ☐ Verbal Threats Of Violence By Suspect
- ☐ Knowledge Of Suspects Prior Criminal Violent Behavior/Use Of Force/Use Of Weapon
- ☐ Other Reasonable Suspicion of Weapons (Specify)
- ☐ Furtive Movements
- ☐ Actions Indicative Of Engaging In Violent Crimes
- ☐ Refusal To Comply With Officer's Direction(s) Leading To Reasonable Fear For Safety
- ☐ Violent Crime Suspected
- ☐ Suspicious Bulge/Object (Describe)

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
- ☒ Area Has High Incidence Of Reported Offense Of 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): Randomly looking through apt windows with a flashlight
- ☐ Evasive, False Or Inconsistent Response To Officer's Questions
- ☐ Changing Direction At Sight Of Officer/Flight
- ☒ Ongoing Investigations, e.g., Robbery Pattern
- ☐ Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms

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: PO Petti | Tax#: 999999
Signature | Command

REVIEWED BY: Rank, Name (Last, First, M.I.)
Print | Tax#
Signature | Command

Stop, Question and Frisk Report

An explanation regarding the circumstances are included under the *"Other reasonable suspicion of Criminal activity (specify)"* caption.

EXHIBIT J

August 31, 2011

Judge Declines to Dismiss Case Alleging Racial Profiling by City Police in Street Stops

By AL BAKER

A federal judge on Wednesday rejected an effort to dismiss a case claiming that New York City police officers use race as a factor in stopping people on the streets, sometimes to frisk them, saying there is enough evidence for a jury to decide.

Lawyers for the city had argued that no trial was necessary and moved to dismiss a lawsuit against the city and its police force. In the suit, the Center for Constitutional Rights alleges a widespread pattern of stops based not on reasonable suspicion of individuals but on racial profiling in the Police Department's "stop, question and frisk" policy.

As a practical matter, the stops display a measurable racial disparity: black and Hispanic people generally represent more than 85 percent of those stopped by the police, though their combined populations make up a small share of the city's racial composition.

The judge, Shira A. Scheindlin of Federal District Court, ruled that the evidence submitted so far raised enough questions to allow a trial to go forward to determine whether the department's practices amounted to a pattern of race-based stops. She said the racial claims appeared "difficult to discern."

"This case presents an issue of great public concern," she wrote in her decision. "Writ large, that issue is the disproportionate number of African-Americans and Latinos who become entangled in our criminal justice system, as compared to Caucasians."

Police Commissioner Raymond W. Kelly has repeatedly rejected the accusation of racial profiling and has said the racial breakdown of the stops correlates to the racial breakdown of crime suspects. Police officials say the street-stop tactic has helped reduce crime, remove guns from streets and save lives.

But in raw numbers, the number of stops continues to rise, bringing the practice under increasing scrutiny from lawmakers, academics, the Center for Constitutional Rights and the New York Civil Liberties Union.

As the judge's order became public, Christopher T. Dunn, the associate legal director of the civil liberties organization, released statistics showing that the number of stops in the second quarter of 2011 totaled 178,824. The first quarter's total, 183,326, was the highest for any quarter since 2002, when the numbers began being reliably tracked; in 2010, city officers made more street stops — 601,055 — than in any previous 12-month period.

"We had 575,000 in 2009, just over 600,000 in 2010, and we're now on pace for over 700,000 this year," said Darius Charney, a lawyer with the Center for Constitutional Rights, which filed the case in January 2008. "All this is in an era of either declining or flat crime rates, which begs the question: Is there really a need for this many stops?"

The city plans to contest the reliability and methodology of the plaintiff's statistical expert, upon whom the ruling relied heavily, said Heidi Grossman, deputy chief of the city Law Department's special federal litigation division.

"While the court has left it for the jury to determine whether the city has taken adequate action to ensure that stops of New Yorkers are handled appropriately, we are confident the jury will find in the city's favor," Ms. Grossman said. "Indeed, the court noted that the city does not have an express policy of stopping minorities based on race."

Ms. Grossman noted that the judge held that the lead plaintiff, David Floyd, was stopped in February 2008 under reasonable suspicion by the police, despite his challenge of the encounter. She said further procedural challenges could arise before trial, which the ruling also noted.

At one point in her ruling, Judge Scheindlin provocatively termed some of the underlying evidence presented by the plaintiffs as a "smoking gun." She was referring to audio recordings of station-house roll calls, in which officers received instructions on their arrest, summons and street-stops activity.

"In sum," she wrote, "I find that there is a triable issue of fact as to whether N.Y.P.D. supervisors have a custom or practice of imposing quotas on officer activity, and whether such quotas can be said to be the 'moving force,' behind widespread suspicionless stops."

EXHIBIT K

Investigations

Investigation: Stop and Frisk appears headed to trial

Wednesday, August 31, 2011

Tags:
nypd, investigations, jim hoffer

Jim Hoffer
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Web produced by Jennifer Matarese, Eyewitness News

NEW YORK (WABC) -- The NYPD's key crime-fighting tactic known as Stop and Frisk appears headed to trial.

A federal judge in an 86-page decision ruled that a lawsuit by several plaintiffs raises serious questions about quotas, racial profiling, and constitutional rights that should be heard by a jury:

"It confirms what we and the plaintiffs in the case as well as thousands of New Yorkers have been saying for years, there are serious questions about the legalities and fairness of NYPD's Stop and Frisk program," said Darius Charney, Center for Constitutional Rights.

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David Ourlicht, a SUNY Albany college student, is one of the plaintiffs.

"It's thousands of people like me who deal with this on an everyday basis and it's good that it's not being thrown away and it's being heard," Ourlicht said.

In a SKYPE interview, Ourlicht explained how he filed the suit after being stopped and searched numerous times without reason. He says the Judge's decision not to throw out the case moves the lawsuit toward an ultimate goal.

"That people don't have to be living in fear of those supposed to protect us," Ourlicht said.

In her decision the Judge cited "smoking gun roll call recordings" as sufficient evidence to move forward on the claim of quotas. Some of those recordings were heard last year in an Eyewitness News investigation.

"I want a ghost town; I want to hear an echo from one end of the street to the other. You understand that's what I want in a perfect world. So that's your mission. You guys need collars, you need activity, there you go they've got to be removed," said Rollcall video recording.

The judge did rule that officers "were justified in their reasonable suspicion" that led to one Stop and Frisk. But the claims by three other plaintiffs will move forward based in part on testimony before the Judge by Officer Adil Polanco who first blew-the-whistle on Stop and Frisk quotas last year on Eyewitness News.

"I'm not going to keep arresting innocent people, I'm not going to keep searching people for no reason, I'm not going to keep writing people for no reason, I'm tired of this," Polanco said.

In response to the Judge's ruling, NYPD Deputy Commissioner Paul Browne said, "Stops save lives, the NYPD is lawfully engaging in doing just that with the lives of over 2,500 young men of color having been spared over the last decade because of stops and other programs focused on reducing shootings and murders in those neighborhoods where they occur most."

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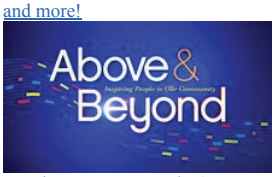

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EXHIBIT L

Mayor de Blasio Announces Agreement in Landmark Stop-And-Frisk Case

January 30, 2014

City to fully embrace stop-and-frisk reform, pledges respect for every New Yorker's constitutional rights

CONTACT: *pressoffice@cityhall.nyc.gov, (212) 788-2958*

NEW YORK—Mayor Bill de Blasio today announced a historic agreement in the *Floyd vs. City of New York* case, taking steps to end the years-long legal battle that found the overuse of stop-and-frisk unconstitutional. Standing with plaintiffs, Police Commissioner Bill Bratton and incoming Corporation Counsel Zach Carter in Brownsville, Brooklyn, the mayor pledged to reunite police with communities across the city and to respect the constitutional rights of every New Yorker.

"This is a defining moment in our history. It's a defining moment for millions of our families, especially those with young men of color. And it will lay the foundation for not only keeping us the safest big city in America, but making us safer still. This will be one city, where everyone's rights are respected, and where police and community stand together to confront violence," said **Mayor Bill de Blasio**.

"We will not break the law to enforce the law. That's my solemn promise to every New Yorker, regardless of where they were born, where they live, or what they look like. Those values aren't at odds with keeping New Yorkers safe—they are essential to long-term public safety. We are committed to fulfilling our obligations under this agreement as we protect and serve this great city," said **Police Commissioner Bill Bratton**.

Under the agreement with plaintiffs announced today, a court-appointed monitor will serve for three years, overseeing the NYPD's reform of its stop-and-frisk policy. The monitor is empowered to report to federal court on the city's progress meeting its obligation to abide by the United States Constitution. The city will also take part in a joint process with community stakeholders to ensure people affected by stop-and-frisk play an active role in shaping reform.

"This administration will be a dogged defender of our peoples' rights. That's not an imperative at odds with keeping our people safe. And this agreement is a powerful first step toward achieving both of those goals. This will be real reform that focuses police attention on those individuals actually engaged in criminal activity and limits the intrusion of police activity on the

lives of millions of law abiding New Yorkers," said **incoming Corporation Counsel Zach Carter**.

The city has already taken the first step in the process by asking the Court of Appeals to remand the case to the District Court. Both the city's law department and the plaintiffs have agreed to recommend to the District Court that the monitor supervision will have oversight for three years, on the condition that the NYPD is in substantial compliance with the decree. Once that resolution has been confirmed by the District Court, the city will immediately move to withdraw its appeal.

"This is a breakthrough moment, because it underscores the City of New York's commitment to stop a pattern of racial profiling that has been clothed in stop-and-frisk policing. We must all move forward with finding a way to secure citizens without profiling them," said **Reverend Al Sharpton, Founder and President of the National Action Network**.

"Today marks the culmination of tireless and courageous work organizing, educating and empowering our communities and creating the change it took to finally reform unjust practices that target minority communities. I am honored to stand with Mayor de Blasio as we work together to end the stop-and-frisk era and safeguard the civil liberties of all New Yorkers," said **Public Advocate Letitia James**.

"I applaud Mayor de Blasio and the law department for coming to this historic agreement with the plaintiffs in the Floyd case. The city has been fighting reform for far too long, and the legacy of Floyd should be that our city never again experiences the type of widespread constitutional violations outlined in Judge Scheindlin's opinion," said **Comptroller Scott Stringer**.

"I applaud this settlement, because reforming stop-and-frisk and mending the relationship between communities of color and the NYPD is long overdue. I am glad the mayor has committed himself to righting these wrongs, and the Council is looking forward to shaping, participating and providing oversight as the reforms are implemented," said **City Council Speaker Melissa Mark-Viverito**.

"The NYPD's stop-and-frisk policy has driven a wedge between the police and our communities, and today's decision is a major step toward rebuilding that trust. I am proud today to stand with Mayor de Blasio, elected officials, advocates and others as this important decision is made. Together, we can move forward and ensure that our streets remain safe and the people of this great city are treated with respect," said **Bronx Borough President Ruben Diaz Jr**.

"As leaders and advocates, our top priority is keeping New Yorkers safe; that has been my mission as an elected official and as a 22-year veteran of the New York City Police Department. Alienating our communities—especially our young black and Latino men—is counterproductive to this fundamental goal. We must mend the bond between law enforcement and the communities they serve. We must restore faith in our police department. We must make our brave officers and our men of color partners again. I have been proud to be part of this movement toward meaningful reform, including my participation in this litigation, and I am

proud right now that we are seeing true progress," said **Brooklyn Borough President Eric Adams**.

"Mayor de Blasio's decision to drop the Floyd appeal is good news for all New Yorkers who care about both justice and crime prevention. Our policing can be effective while protecting and respecting all New Yorkers. Stop-and-frisk didn't work. It violated the civil rights of those who were stopped. And it alienated entire neighborhoods in our city. I'm glad that the mayor has decided to drop this misbegotten case," said **Manhattan Borough President Gale A. Brewer**.

"I am proud to stand with the mayor today for this announcement," said **Queens Borough President Melinda Katz**. "I believe it's the right path for the city to take at this time. It is critical that we restore trust and faith in every community in this city and begin to repair relationships. With effective community policing, New York can remain the safest big city in this country, while serving all of its residents with respect."

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EXHIBIT M

DAILY NEWS

LOCAL

New York City being sued over "Clean Halls" program

Opponents of program say it lets NYPD arrest people for trespassing outside their own buildings

BY ROBERT GEARTY / NEW YORK DAILY NEWS

SUNDAY, OCTOBER 14, 2012, 11:14 PM

SETH WENIG/AP

Protesters march against NYPD's "stop-and-frisk" program in New York.

Clean Halls — dirty arrests?

That's the question that will be asked this week, when the New York Civil Liberties Union begins a courtroom battle over a controversial NYPD program that allows cops to patrol in private apartment buildings whose owners have given them permission.

Opponents say the program, called "Clean Halls," lets police stop and even arrest residents for trespass outside their own buildings. "One cannot be guilty of trespass while . . . merely exiting or entering private property . . . absent some unusual circumstances," NYCLU lawyer Alexis Karteron argues in court papers.

In the case, Ligon vs. City, Jaenean Ligon claims she and her three sons have been stopped and arrested outside or near their private E.163rd St. apartment building in the Bronx multiple times without cause. Karteron, who filed the case on behalf of Ligon and 12 others, said despite numerous complaints about the practice, the NYPD brass "has not taken sufficient stops to put an end to it."

The city says the program, now in place in 16,000 privately owned buildings, is legal and reduces crime, drug deals and other illegal activity. Witnesses include plaintiff Letitia Ledan, 41, who says cops stopped her twice for trespassing outside her building in River Park Towers, a residential apartment complex in the Bronx. In neither case was Ledan arrested. Another witness is Columbia University Prof. Jeffrey Fagan, who conducted a review of 1,857 trespass stops outside Bronx Clean Halls buildings in 2011 and found more than 1,100 stops were unjustified. The city says Fagan's findings are "flawed and insufficient" and will put up its own expert to argue that only 79, or 4.3%, of the suspect stops were "apparently unjustified."

Bronx prosecutor Jeannette Rucker will also testify. Rucker notified the NYPD in July that her office would no longer rubber-stamp arrests that come from trespass stops outside Clean Halls buildings and public housing projects unless the arresting officer is interviewed.

The NYCLU said in court papers the letter supports its contention that the trespass arrests are unconstitutional, but the city says it only establishes the Bronx district attorney's office has made certain policy

decisions.

"(The city) challenges the factual basis that Ms. Rucker provides as a basis for the change in procedures," said city lawyer Mark Zuckerman.

"Regardless, (the city) has complied with the directive, continues to endeavor to improve upon the quality of arrests and hopes that the new procedure will help toward that goal."

The New York Times

October 22, 2012

Trespassing in Your Own Home

District attorney's offices in New York City have generally supported the Police Department — or kept quiet about their reservations — during the escalating battle over the department's stop-and-frisk program, under which hundreds of thousands of citizens are stopped every year, often for no reason.

But a hearing under way in Federal District Court in Manhattan is featuring an open and fiery dispute between the Police Department and an assistant district attorney from the Bronx, who has testified that her office began to have misgivings about the legality of some trespassing arrests as far back as five years ago.

The federal lawsuit, Ligon v. City of New York, was brought on behalf of people who say they were illegally stopped, given tickets or arrested on trespassing charges in apartment buildings, some in buildings where they lived. The suit focuses on the city's two-decade-old "Clean Halls" program, under which police officers patrol private buildings with the permission of landlords.

Jeannette Rucker, a veteran prosecutor, recounted that her office began to have questions about many of the Police Department's trespassing arrests in the past several years. She said Bronx judges "just started dismissing these cases left and right" because they believed that the officers had no legitimate legal reason for approaching the people who had been arrested — sometimes merely because they had been seen entering or leaving a Clean Halls building. Her staff also told her that judges were throwing out cases because the police had charged people with trespassing in their own buildings.

In a memo in April 2009, Ms. Rucker notified the Police Department that trespassing cases had become "problematic for the district attorney's office" because judges were dismissing them for insufficient cause. The memo cautioned officers to check to establish people's residency and to determine whether they were legitimate visitors.

Yet the improper arrests were still a big problem two years later. Ms. Rucker testified that in 2011, "we were getting people who were arrested who were tenants. We were getting people arrested who ... were lawful visitors. And I'm like: What can we do to stop this?"

Last year, the Bronx district attorney's office issued another memo to the police, noting that courts had held that a person who merely exited a Clean Halls building could not be legally stopped unless the officer had a clear reason to suspect criminality. This summer, Ms. Rucker notified the Police Department that her office would no longer prosecute Clean Halls or public housing

trespassing cases based on paperwork and would require that officers be interviewed.

The case could potentially go into next year. But the prosecutor's testimony is strong evidence of the program's problems and the Police Department's failure to protect people's constitutional rights.

The New York Times

January 8, 2013

Police Stop-and-Frisk Program in Bronx Is Ruled Unconstitutional

By JOSEPH GOLDSTEIN

An element of the New York Police Department's stop-and-frisk practice was deemed unconstitutional by a federal judge on Tuesday, a ruling that may have broad implications for the city's widespread use of police stops as a crime-fighting tactic.

The decision, the first federal ruling to find that the practice under the Bloomberg administration violates the Fourth Amendment protection against unreasonable search and seizure, focused on police stops conducted in front of several thousand private residential buildings in the Bronx enrolled in the Trespass Affidavit Program. Property managers in that program have asked the police to patrol their buildings and to arrest trespassers.

But the judge, Shira A. Scheindlin of Federal District Court in Manhattan, said officers were routinely stopping people outside the buildings without reasonable suspicion that they were trespassing.

"While it may be difficult to say where, precisely, to draw the line between constitutional and unconstitutional police encounters, such a line exists, and the N.Y.P.D. has systematically crossed it when making trespass stops outside TAP buildings in the Bronx," Judge Scheindlin ruled.

Judge Scheindlin is presiding over three significant stop-and-frisk lawsuits that could fundamentally change New York City's strategy for preventing street crimes. While the judge's decision applies to only one of the lawsuits, Ligon v. the City of New York, the cases share some core constitutional issues.

Much of the criticism in the ruling is directed at the training the Police Department provides officers, which Judge Scheindlin suggested sidesteps the Fourth Amendment.

The evidence in this case, she found, "strengthens the conclusion that the N.Y.P.D.'s inaccurate training has taught officers the following lesson: Stop and question first, develop reasonable suspicion later."

Christopher T. Dunn, a lawyer for the New York Civil Liberties Union, one of the groups representing the plaintiffs, said, "If New York City has any sense, it will use this ruling as an opportunity to start a wholesale reform of stop and frisk."

In the decision released on Tuesday, the judge ordered the police "to cease performing trespass

stops" outside the private buildings in the program unless officers have reasonable suspicion, a legal standard that requires officers to be acting on more than just a hunch.

The fact that a person was merely seen entering or leaving a building was not enough to permit the police to stop someone, "even if the building is located in a high-crime area, and regardless of the time of day," the judge ruled. Nor was it enough for an officer to conduct a stop simply because the officer had observed the person move furtively, Judge Scheindlin said. (The forms that the police fill out after each street stop offer "furtive" movements as a basis for the stop.)

The police commissioner, Raymond W. Kelly, criticized the ruling, contending that the program, also known as Clean Halls, gave residents of the Bronx buildings "a modicum of safety for less prosperous tenants. Their landlords explicitly requested this extra level of protection."

"Today's decision unnecessarily interferes with the department's efforts to use all of the crime-fighting tools necessary to keep Clean Halls buildings safe and secure," he added.

Paul J. Browne, the department's chief spokesman, said the program led to several recent arrests for illegal guns. On Dec. 16, the police arrested a man with a handgun on the rooftop of a residential building in the Bronx.

On Nov. 21, officers recovered a handgun after observing the gun's butt protruding from a man's jacket pocket as they patrolled a fourth-floor hallway in a building on East 220th Street.

Judge Scheindlin called for a hearing to discuss possible remedies to the issues she raised. At that hearing, she said, she will consider requiring the Police Department to create a formal written policy "specifying the limited circumstances in which it is legally permissible to stop a person outside a TAP building on a suspicion of trespass," revise the training of officers and alter some of the training literature and videos used to teach officers how to conduct lawful stops.

The ruling followed a seven-day hearing in October during which nine black and Latino residents testified about being stopped while leaving their homes or visiting friends and relatives as guests. With testimony by plaintiffs and police witnesses, it was the first hearing of its type in any of the three stop-and-frisk cases before Judge Scheindlin, and the testimony evidently shaped her conclusions.

"Because any member of the public could conceivably find herself outside a TAP building in the Bronx, the public at large has a liberty and dignity interest in bringing an end to the practice of unconstitutional stops at issue in this case," the judge wrote.

"For those of us who do not fear being stopped as we approach or leave our own homes or those of our friends and families, it is difficult to believe that residents of one of our boroughs live under such a threat. In light of the evidence presented at the hearing, however, I am compelled to

conclude that this is the case." The judge said she considered the plaintiffs credible partly because of "the striking similarities" in their experiences being stopped.

As a person exits a building, the ruling said, "the police suddenly materialize, stop the person, demand identification, and question the person about where he or she is coming from and what he or she is doing."

The decision continued: "Attempts at explanation are met with hostility; especially if the person is a young black man, he is frisked, which often involves an invasive search of his pockets; in some cases the officers then detain the person in a police van."

Judge Scheindlin also expressed concern over a department training video that she said incorrectly characterized what constituted an actual police stop. In the video, a uniformed narrator states "Usually just verbal commands such as 'Stop! Police!' will not constitute a seizure."

The narrator explains that the encounter usually qualifies as an actual stop only if the officer takes further steps such as physically subduing a suspect, pointing a gun at him, or blocking his path. "This misstates the law," Judge Scheindlin said of the video, which has been shown to most of the patrol force.

This article has been revised to reflect the following correction:

Correction: January 8, 2013

An earlier version of this article incorrectly indicated that more than 10 black and Latino residents testified during a seven-day hearing in October about being stopped by the police in the Bronx. Only nine black and Latino residents testified.

Contact: Albert O'Leary
PBA Communications Director
212-298-9190

or **Joseph Mancini**
212-298-9150

January 8, 2(
For Immediate Relea

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PBA REACTS TO FEDERAL JUDGE'S STOP AND FRISK DECISION

PBA president Patrick J. Lynch said:

> "When left to the discretion of a police officer, stop and frisk is a lawful and essential tool to ensure the safety of the public and police alike. But the actions at issue are part of a Department program specifically designed to compensate for the dangerously low staffing levels imposed on the NYPD by the City's misguided budget priorities. We welcome any training that will allow our members to better perform their jobs, but reject efforts to hold our members responsible for management's poorly conceived programs. Perhaps funding will now be made available to safely staff our streets which would allow the NYPD to fulfill its mission without reliance on stop-gap programs like this one."

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EXHIBIT N

Police unions link contract talks to stop-frisk litigation

By Sally Goldenberg 5:00 a.m. | Mar. 5, 2014

Two leaders of the city's police unions said on Tuesday they would consider using their ongoing stop-and-frisk litigation as a point of leverage during contract negotiations.

"My feeling is that's something for negotiations; that's something that you bring to the bargaining table," Captains Endowment Association president Roy Richter told Capital.

Richter's union is attempting to appeal a federal court ruling that the NYPD misused stop-and-frisk. The court ordered a monitor to oversee the department, with an order to scale back the policing method.

When asked if he would agree to drop his appeal if the de Blasio administration offered him a suitable contract, Richter indicated he might.

"To the extent that that the city is open to discussing it outside the courtroom and include that as part of ongoing labor negotiations, I think that's appropriate and I'm open to that," he said.

Richter said he plans to meet with City Hall's labor negotiators in the coming weeks.

Currently 152 municipal labor deals are expired, and Mayor Bill de Blasio has said he plans to settle them by the end of the calendar year, though he has not committed to providing retroactive wages for years worked under outdated contracts.

Ed Mullins, president of the Sergeants Benevolent Association, also did not dismiss the idea of linking the appeal to contract talks.

"At the end of the day, the goal should be, from both sides of the table, to achieve fair contracts and ultimately do what's right, in the best interest of everyone," Mullins told Capital. "And that means for the taxpayer and the employee. If there are better ways to settle issues, whether it be stop-and-frisk or other labor issues and that can be done across the table instead of paying all these lawyers, I'm sure the city as well as myself would be willing to discuss those things."

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"I'm open to discuss any topic related to bargaining, the safety of the city, methods of policing," he added.

In addition to appealing the federal decision, Mullins also sued over the City Council's ban on bias-based profiling. De Blasio is expected to drop former mayor Michael Bloomberg's legal action against that measure this week.

Mullins said he had one meeting with de Blasio's top labor negotiator, Robert Linn, in late February.

He described it as cordial but said, "It didn't move the ball forward."

One of the sticking points between his union and the city, he said, is whether his members should contribute more toward their health care. Linn did not propose a specific amount for sergeants to pay toward their benefits, Mullins added.

"Not a lot of issues [were] brought up. Basically it was preliminary ground rules for overall goals," he said.

MORE: CITY HALL BILL DE BLASIO CAPTAINS ENDOWMENT ASSOCIATION LABOR NEW YORK POLICE DEPARTMENT ROBERT LINN SERGEANTS BENEVOLENT ASSOCIATION UNIONS

Author: Sally Goldenberg

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EXHIBIT O

Stop-and-frisk advocates pan unions' negotiating plan

By Sally Goldenberg 5:00 a.m. | Mar. 7, 2014

Advocates for reforming stop-and-frisk criticized two police union presidents for saying they would consider dropping a suit to block police oversight measures as part of negotiations for a new contract.

"It is disgraceful that NYPD unions are attempting to hold the civil rights of New Yorkers hostage as leverage for their contract negotiations," said Joo-Hyun Kang, a spokeswoman for Communities United for Police Reform, an advocacy organization that pushed for legal changes to stop-and-frisk.

"We cannot comment on the police unions' motivation for pursuing intervention; what is clear is that the unions have stated no legally valid interest in intervening in these proceedings," said Baher Azmy, legal director of the Center for Constitutional Rights, which sued city last year over the police practice.

Kang and Azmy were responding to a Capital report on Wednesday morning that quoted two union presidents on their potential negotiating tactic.

Ed Mullins, president of the Sergeants Benevolent Association, said he would consider linking his ongoing appeal of a federal court ruling that found stop-and-frisk unjustly targeted minorities to his union's negotiations for a new contract.

Mullins is also pursuing legal action over a new law that gives citizens a private right of action if they can prove they were stopped and frisked because of their race, gender, housing status or a slew of other identifying factors.

On Wednesday Mayor Bill de Blasio announced he would drop former mayor Michael Bloomberg's lawsuit over that measure, which the City Council passed last year.

Roy Richter, president of the Captains Endowment Association, also said he might change his stance on the federal appeal, depending on what the city offers him during collective bargaining.

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Mayor Bill de Blasio, who is facing 152 expired union contracts that he has said he wants to settle by the year's end, did not comment on the unions leaders' remarks.

"The mayor has made his position known on stop-and-frisk litigation," said spokesman Wiley Norvell. "As with all open labor contracts, the mayor will respect workers and protect taxpayers throughout the process."

MORE: CITY HALL BILL DE BLASIO LABOR MUNICIPAL CONTRACTS NYPD STOP AND FRISK UNIONS

Author: Sally Goldenberg

MORE IN CITY HALL

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EXHIBIT P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-1924**
CITY OF NEW ORLEANS, **Defendant**	**SECTION "E"**

ORDER AND REASONS

Before the Court are Motions to Intervene filed by the Crescent City Lodge No. 2, Fraternal Order of Police, Inc. and Walter Powers, Jr. in his official capacity as Acting President of FOP (the "FOP") ; Walter Powers, Jr. in his individual capacity ("Powers");[1] Community United for Change ("CUC");[2] the Police Association of New Orleans and Michael Glasser in his official capacity as President of PANO ("PANO"); Michael Glasser in his individual capacity ("Glasser");[3] the Office of the Independent Police Monitor ("OIPM") and Susan Hutson in her official capacity as Independent Police Monitor for the City of New Orleans ("IPM"); and Susan Hutson in her individual capacity ("Hutson").[4]

Background

The Complaint in the above case was brought by the United States of America ("United States") against the City of New Orleans, Louisiana (the "City"), under the provisions of the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141 ("Section 14141"); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §

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[1] R. Doc. 9.

[2] R. Doc. 11.

[3] R. Doc. 13.

[4] R. Doc. 15.

3789d (the "Safe Streets Act"); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112 ("Title VI"), in order to remedy an alleged pattern or practice of conduct by the New Orleans Police Department (the "NOPD") that subjects individuals to excessive force in violation of the Fourth Amendment, unlawful searches and seizures in violation of the Fourth Amendment, and discriminatory policing practices in violation of the Fourteenth Amendment, the Safe Streets Act, and Title VI. The proposed Consent Decree contains detailed provisions concerning changes in NOPD policies and practices related to: (1) the use of force; (2) investigatory stops and detentions, searches, and arrests; (3) custodial interrogations; (4) photographic lineups; (5) bias-free policing; (6) community engagement; (7) recruitment; (8) training; (9) officer assistance and support; (10) performance evaluations and promotions; (11) supervision; (12) the secondary employment system, also known as the paid detail system; (13) misconduct complaint intake, investigation, and adjudication; and (14) transparency and oversight. In addition, the proposed Consent Decree includes detailed provisions regarding the implementation and enforcement of the Consent Decree.

On July 31, 2012, this Court entered an order requiring any person wishing to seek intervention in this case under Federal Rule of Civil Procedure 24 to file a contradictory motion to intervene no later than August 7, 2012, and any party opposing any motion(s) to intervene to file an opposition to the motion(s) no later than August 14, 2012. On August 6, 2012, FOP and Powers filed a motion to intervene. On August 7, 2012, CUC, PANO and Glasser, and OIPM, IPM and Hutson filed their motions to intervene. On August 14, 2012, the City and the United States filed memoranda in opposition to the motions to intervene.[5]

[5] R. Docs. 26 (City's opposition) and 27 (United States' opposition).

The Court heard oral argument on all four motions to intervene on August 20, 2012.

I. Intervention under Rule 24

A. Intervention of Right

To intervene as of right under Federal Rule of Civil Procedure 24(a), four requirements must be met:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

New Orleans Public Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 463 (5th Cir. 1984) (en banc), *cert. denied*, 469 U.S. 1019 (1984). If a party seeking to intervene fails to meet any one of those requirements, it cannot intervene as a matter of right. *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994) (citing *Kneeland v. Nat'l Collegiate Athletics Ass'n*, 806 F.2d 1285, 1287 (5th Cir. 1987), *cert. denied*, 484 U.S. 817 (1987)).

With respect to the requirement that the party seeking to intervene as of right be sufficiently interested, the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") has underscored that "[n]ot any interest, however, is sufficient." *Saldano v. Roach*, 363 F.3d 545, 551 (2004). Rather, intervention of right requires an interest that is " 'direct, substantial, [and] legally protectable.' " *Id.* (quoting *Doe v. Glickman*, 256 F.3d 371, 379 (2001)). For such an interest to be "legally protectable," it must "be one which the *substantive* law recognizes as belonging to or being owned by the applicant." *United Gas Pipe Line Co.*, 732 F.2d at 464. The claim asserted by the applicant must be one as to which

the applicant is the real party in interest. *Id.*

Furthermore, a proposed intervenor has the burden of establishing that the existing parties to the lawsuit inadequately represent the applicant's interests. *See Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994); *Espy*, 18 F.3d at 1207. This inadequate representation requirement is satisfied "if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10, 92 S.Ct. 630, 636 n.10 (1972). Nevertheless, "[a]lthough the applicant's burden of showing inadequate representation is minimal, 'it cannot be treated as so minimal as to write the requirement completely out of the rule.' " *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (quoting *Cajun Elec. Power Coop.*, 940 F.2d at 120).

The Fifth Circuit recognizes two presumptions of adequate representation. *See Edwards*, 78 F.3d at 1005. First, in a suit involving a matter of sovereign interest, the governmental entity is presumed to represent the interests of all of its citizens. *Id.* (citing *Hopwood*, 21 F.3d at 605. This presumption of adequate representation arises whether the would-be intervenor is a citizen or subdivision of the governmental entity. *Id.* To overcome this presumption, the applicant must show "that its interest is in fact different from that of the [governmental entity] and that the interest will not be represented by [it]." *Id.* (citing *Hopwood*, 21 F.3d at 605) (quoting *Envtl. Def. Fund, Inc. v. Higginson*, 631 F.2d 738, 740 (D.C.Cir. 1979)). This presumption, and the heightened showing required to overcome it, is restricted to lawsuits involving matters of sovereign interest. *Id.* at 1005. Where the governmental entity appears in its capacity as an employer and not in its capacity as a sovereign, however, this presumption is inapplicable. *Id.*

The second presumption of adequate representation arises when the would-be intervenor has the same ultimate objective as a party to the lawsuit. *Id.*; *see Kneeland v. Nat'l Collegiate Athletic Ass'n*, 806 F.2d 1285, 1288 (5th Cir.), *cert. denied*, 484 U.S. 817, 108 S.Ct. 72 (1987). In such cases, the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption. If neither presumption applies, the court reverts to the *de minimis* standard of proof required by *Trbovich* to establish inadequate representation.

B. Permissive Intervention

Rule 24 provides for permissive intervention under subdivision (b).[6] As the Fifth Circuit has recognized, permissive intervention "is wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *United Gas Pipe Line Co.*, 732 F.2d at 470-71 (quoting 7C C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1913, at 376-77 (2d ed. 1986)). "In acting on a request for permissive intervention the district court may consider, among other factors, whether the intervenors' interests are adequately represented by other parties . . . and whether intervention will unduly delay the proceedings or prejudice existing parties." *Kneeland*, 806 F.2d at 1289 (citing *United Gas Pipe Line Co.*, 732 F.2d at 472 and Fed. R. Civ. P. 24(b)).

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[6] Rule 24(b) provides, in pertinent part:

> (b) Permissive Intervention.
> (1) In General. On timely motion, the court may permit anyone to intervene who:
> (A) is given a conditional right to intervene by a federal statute; or
> (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b)(1).

II. The Motions to Intervene

A. OIPM's Motion to Intervene

OIPM's motion to intervene, filed on August 7, 2012, was filed on behalf of the OIPM, the IPM and Susan Hutson in her official capacity as IPM for the City, seeking intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2), or, in the alternative, permissive intervention pursuant to Rule 24(b). Hutson in her official capacity is, in effect, the OIPM and the Court will consider those arguments in tandem. *Kercher v. May*, 484 U.S. 72, 78 (1987) ("[T]he real party in interest in an official capacity suit is the entity represented and not the individual office holder."). Hutson has also sought to intervene in her individual capacity. The Court will consider Hutson's motion regarding her individual capacity separately.

Rule 17(b) of the Federal Rules of Civil Procedure instructs that "capacity to sue or be sued shall be determined . . . by the law of the state in which the district court is held." Fed. R. Civ. P. 17(b). If a proposed intervenor lacks legal capacity to sue or be sued under state law, intervention is not permissible. *See, e.g.*, *Biance v. Lemieux*, No. 11-429, 2012 WL 1466517 (D. Me. Apr. 27, 2012) (denying motion to intervene on grounds that the proposed intervenor, an LLC that had been dissolved and cancelled under New Hampshire law, lacked capacity to sue); *compare Huntington Nat'l Bank v. Caroll*, No. 12-7, 2012 WL 2466968 (N.D.W.Va. Jun. 27, 2012) (granting motion to intervene under Rule 24(b) only after holding that the proposed intervenor possessed legal capacity under West Virginia law). Therefore, the Court must determine, as an initial matter, whether OIPM has the legal capacity to sue or be sued under Louisiana law such that it is capable of intervening in this action.

Under Louisiana law, an entity must qualify as a "natural person" or a "juridical person" to possess the capacity to sue or be sued. *See, e.g., Dugas v. City of Breaux Bridge Police Dep't*, 99-1320 (La. App. 3 Cir. 2/2/00); 757 So.2d 741, 743. It is clear that OIPM is not a natural person. Nor is Hutson when acting in her official capacity as IPM. *Kercher*, 484 U.S. at 78. A juridical person is "an entity to which the law attributes personality, such as a corporation or partnership." La. Civ. Code. Ann. art. 24. Comment (d) to article 24 also provides that "the capacity of a juridical person is governed by provisions in its charter, governing legislation, and customs." La. Civ. Code. Ann. art. 24, cmt. (d). "[I]n the absence of law providing that an entity may sue or be sued, the entity lacks such capacity." *Dantzler v. Pope*, No. 08-3777, 2009 WL 959508, at *1 (E.D.La. Apr. 3, 2009) (Africk, J.) (citing *City Council of Lafayette v. Bowen*, 94-584 (La. App. 3 Cir. 11/2/94); 649 So.2d 611).

In *Roberts v. Sewerage & Water Bd. of New Orleans*, the Louisiana Supreme Court set forth the framework for determining whether an entity qualifies as a juridical person and, as a result, has the capacity to sue and be sued:

> The important determination with respect to the juridical status or legal capacity of an entity is not its creator, nor its size, shape, or label. Rather the determination that must be made in each particular case is whether the entity can appropriately be regarded as an additional and separate government unit for the particular purpose at issue. In the absence of positive law to the contrary, a local government unit may be deemed to be a juridical person separate and distinct from other government entities, when the organic law grants it the legal capacity to function independently and not just as the agency or division of another governmental entity.

92-2048 (La. 3/21/94); 634 So.2d 341, 346. Where there is no constitutional or statutory authority for the entity to sue or be sued, that entity is without capacity to be sued under the *Roberts* analysis. *Green v. District Attorney Office*, No. 08-3685, 2009 WL 651132, at

*4 (E.D. La. Mar. 10, 2009) (Feldman, J.) (citing *Bowen*, 649 So.2d at 613-16).

OIPM asserts that, although it is part of the City by virtue of its position within the Office of the Inspector General ("OIG"), OIPM, and by extension the IPM, is operationally independent from the legislative and executive branches of City government. OIPM further asserts that it is "functionally independent" from the OIG because, while it is classified as a division of the OIG, it does not report to the OIG. Rather, OIPM argues, it reports to a City Council committee, and the OIG does not have authority to remove the IPM from office or otherwise "oversee or impact" the work of the IPM.[7] Thus, OIPM asserts, it has juridical capacity necessary to intervene under Louisiana law.[8]

It is uncontested that OIPM is a division of a City agency – the OIG. A 2008 amendment to the Home Rule Charter of the City of New Orleans created the OIG and provided that the OIG was to establish an Independent Police Monitor division within the OIG.[9] Subsequently, the OIPM was created by City ordinance as a division within the OIG. The City Code provides that OIG, not OIPM, is "operationally independent" from the

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[7] R. Doc. 38 at p. 3 (citing New Orleans City Code, sec. 2-1120(3)-(20)).

[8] R. Doc. 38 at p. 1-3.

[9] Home Rule Charter, Article IX, Sec. 9-401 (Office of Inspector General) states, in pertinent part:

> (1) The Council shall by ordinance create an Office of Inspector General (OIG) and otherwise provide with respect thereto.
>
> (2) The OIG shall provide for a full-time program of investigation, audit, inspections, and performance review to provide increased accountability and oversight of entities of city government or entities receiving funds through the city, and to assist in improving agency operations and deterring and identifying, fraud, waste, abuse, and illegal acts. The OIG is specifically authorized to conduct audits of City entities. The OIG shall also provide for *an Independent Police Monitor Division*, charged with monitoring the operations of the New Orleans Police Department, particularly in the areas of civilian and internally-generated complaints, internal investigations, discipline, significant uses of force, and in-custody deaths . . . .

legislative and executive branches of city government.[10] Nothing in the City Code or Home Rule Charter provides that OIPM has the capacity to sue or be sued. Nothing in the City Code or Home Rule Charter provides that OIPM is "operationally independent."

OIPM is housed by the City as part of the OIG.[11] OIPM is funded by the City as a subset of the funding allocated to the OIG.[12] The IPM reports to the criminal justice committee of the City Council.[13] The IPM may be removed by the City's ethics review board, whose members are appointed by the Mayor and approved by the City Council.[14] OIPM is

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[10] R. Doc. 15-1 at p. 11 (citing City Code, sec. 2-1120, par. 6(b)); R. Doc. 38 at pp. 1-3 (citing City Code, sec. 2-1120). Section 2-1120(6)(b) provides that the *OIG* is "operationally independent" from other City agencies:

> (a) The office of inspector general is "operationally independent" from the legislative and executive branches of the city, including the Council of the City of New Orleans, and the office of the mayor, but is authorized and encouraged to work cooperatively with the ethics review board. "Operationally independent" shall be defined as follows: "not preventing, impairing, or prohibiting the inspector general from initiating, carrying out, or completing any audit, investigation, inspection or performance review."

[11] *See* City Code, sec. 2-1120(14) ("Physical facilities. [T]he city shall provide the . . . office of inspector general with appropriately located office space, which shall be located in close proximity, but off site from city hall. The city shall also provide the ethics review board and the office of inspector general with sufficient and necessary equipment, office supplies, and office furnishings to enable the ethics review board and the office of inspector general to perform their functions and duties.")

[12] *See* Home Rule Charter, Article IX, Sec. 9-401 (Office of Inspector General) ("(3) The OIG, in conjunction with the Ethics Review Board, shall receive an annual appropriation from the Council in an amount not less than .75% (three-quarters of one percent) of the General Fund operating budget, adopted pursuant to Section 3-115(2), which individual appropriation may not be vetoed by the Mayor . . . ."). *See also* 2012 Annual Operating Budget, City of New Orleans, available at: http://www.nola.gov/HOME/Mayors-Office/City-of-New-Orleans-Budget/, at p. 419 (showing the total funding allocated to OIPM for personal services and other operating expenses for 2012); p. 420 (showing the funding allocated to the OIG in 2010, 2011, and 2012); and p. 421 (listing the Independent Police Monitor, Deputy Police Monitor, and Executive Director of Community Relations for the Police Monitor as personnel of the OIG, along with their City pay grades).

[13] City Code, sec. 2-1121(16).

[14] City Code, sec. 2-1121(20) ("Removal of independent police monitor from office. The independent monitor shall only be removed based on the recommendation of the inspector general and approved by a majority vote of the ethics review board."); City Code, sec. 2-719 (establishing the ethics review board, with appointments by the Mayor with approval by the City Council).

"independent" mainly in the sense that the IPM cannot be removed by the Mayor, who appoints the Chief of Police. However, the IPM may be removed by the ethics review board created by the City. The OIPM division of OIG is not a juridical person separate and distinct from other government entities. Neither the law nor custom attributes juridical personality to the OIPM. For all of these reasons, using the *Roberts* analysis, the Court finds that the OIPM lacks juridical capacity to sue or be sued and thus lacks capacity to intervene as of right or pursuant to this Court's discretion.

Notwithstanding the fact that OIPM does not have the capacity to sue and thus cannot intervene in this case, the City cannot use the proposed Consent Decree to avoid compliance with the ordinance creating OIPM, for example, by changing the budget allocated to OIPM.[15] The Court does not assume that the City is attempting to do so. In fact, the proposed Consent Decree specifically provides that entry of the Consent Decree will in no way diminish the authority of OIPM, and the entire Memorandum of Understanding between OIPM and the NOPD is incorporated into the proposed Consent

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[15] Indeed, the City and the United States have already agreed to four changes clarifying that the proposed Consent Decree is not intended to avoid compliance with the ordinance. At oral argument, counsel for the Department of Justice and the City represented that they have agreed to make the following changes to the proposed Consent Decree:

> (1) Paragraph 426: Change "The PIB and IPM *shall* coordinate and confer . . ." to "the PIB and IPM *should* coordinate and confer . . .".
>
> (2) Paragraph 443: Change "The IPM *will* coordinate with the Monitor and the NOPD. . ." to "The IPM *may* coordinate with the Monitor and the NOPD . . .".
>
> (3) Paragraph 454: Change "The Monitor *may* coordinate with the IPM . . ." to "The Monitor *shall* coordinate with the IPM . . . ".
>
> (4) Paragraph 459: Change "The Monitor *may* coordinate and confer with the IPM . . . " to "The Monitor *shall* coordinate and confer with the IPM . . . ".

Decree.[16] Further, the United States has stated that, had the OIPM "not already been in existence in New Orleans, it would have insisted that such an office be created because long term civilian oversight is critical to ensuring constitutional policing."[17]

Hutson, individually, has legal capacity. However, she has not provided the Court with argument regarding her individual interest and how any such interest would be impaired as a result of the proposed Consent Decree. Consequently, Hutson has not met the requirements to intervene as of right or pursuant to the Court's discretion.

B. CUC's Motion to Intervene

CUC filed its motion to intervene August 7, 2012. CUC is "a non-profit association of people in New Orleans who have done admirable work for decades to transform the New Orleans Police Department [NOPD] into a constitutional policing department that respects the rights of all residents."[18]

CUC claims that it meets the requirements for intervention as of right because: (1) its motion was timely filed in accordance with the Court's order of July 31, 2012; (2) it has a demonstrated interest in transformation of the NOPD based on decades of work by its members and work on the Consent Decree process; (3) disposition of this case through the proposed Consent Decree without CUC's involvement would impede the ability of CUC and citizens to protect their interests; and (4) there is no existing party which adequately represents the interests of "the people who are the primary victims of the culture and

[16] R. Doc. 2-1 at pars. 440, 442.

[17] R. Doc. 23 at p. 13. The Court recognizes that the OIPM does not represent community groups in a legal sense.

[18] R. Doc. 11 at p. 1; R. Doc. 33 at p. 1. The Court notes that under Louisiana law "[a]n unincorporated association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding." La. Rev. Stat. § 12:507(A).

corruption pointed out by DOJ."[19]

With respect to intervention as of right, first, there is no dispute as to the timeliness of CUC's motion to intervene. With respect to the "interest" requirement, CUC asserts that it has such an interest by virtue of its decades of work on police reform in New Orleans. The Court certainly recognizes and appreciates the work that CUC has done and acknowledges that CUC is interested in the resolution of this case. Nonetheless, CUC has failed to cite any – and the Court is not aware of any – "legally protectable interest" in the subject matter of this litigation that the substantive law recognizes as belonging to or owned by CUC. *See United Gas Pipe Line Co.*, 732 F.2d at 463. For example, CUC has not cited any contractual rights or property rights of its members that may be impaired by the disposition of this action. Because a party cannot intervene if it fails to fulfill any one requirement for intervention as of right, *Espy*, 18 F.3d at 1205, the CUC is not entitled to intervention as of right.

Moreover, even if CUC did have a legally protectable interest related to the subject matter of this litigation, the Court finds that CUC's interests are not, as a practical matter, impaired by this litigation. The proposed Consent Decree does not prevent CUC, any other community organization, or any individual community member, from initiating suit against NOPD officers who engage in unconstitutional practices. Nor does the proposed Consent Decree prevent CUC, any other community organization, or any community members, from continuing to work on police reform. *See, e.g., City of Los Angeles*, 288 F.3d at 402 (likewise holding that the interests of numerous community groups and individuals were not impaired by the litigation involving a consent decree between the City of Los Angeles

[19] R. Doc. 11-1 at p. 4 and R. Doc. 33 at p. 2.

and the Department of Justice to reform the Los Angeles Police Department).[20] As a result, the CUC does not meet the "practical impairment" requirement for intervention as of right.

In the alternative, the CUC has sought permissive intervention pursuant to Rule 24(b). As the Fifth Circuit has recognized, permissive intervention "is wholly discretionary" with the district court. *United Gas Pipe Line Co.*, 732 F.2d at 470-71. "In acting on a request for permissive intervention the district court may consider, among other factors, whether the intervenors' interests are adequately represented by other parties . . . and whether intervention will unduly delay the proceedings or prejudice existing parties." *Kneeland*, 806 F.2d at 1289. In this case, the Court finds that permissive intervention by CUC is not appropriate because it will unduly delay these proceedings and prejudice the existing parties while not offering significant assistance to the Court.

C. FOP and PANO's Motions to Intervene

FOP and PANO (the "Police Associations")[21] filed motions to intervene on August 6 and 7, 2012, respectively, on their own behalves and on behalf of their members. FOP and PANO are nonprofit corporations organized under the laws of the State of Louisiana to

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[20] In *City of Los Angeles*, the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") remanded the matter with respect to the Community Intervenors' motion to intervene permissively because the district court did not "conduct the proper analysis in determining permissive intervention." *City of Los Angeles*, 288 F.3d at 403. On remand, the district court granted the Community Intervenors' renewed motion to intervene permissively but "concede[d] to being skeptical that the promised benefits to be derived from the [Community Intervenors'] participation [would] materialize." No. 00-11769 (C.D. Cal. Oct. 3, 2002), R. Doc. 193 at p. 2. The district court further cautioned that "if the participation of the [Community Intervenors] should prove counter-productive . . . then the Court will not hesitate to consider vacating [its Order granting intervention] and terminating the intervention of [the Community Intervenors]." *Id.*

This Court is not convinced that CUC's intervention in this case is appropriate. Consequently, as set forth in this Order, the Court also denies CUC's motion in the alternative to intervene permissively.

[21] Powers and Glasser seek to intervene in their official capacities as acting president and president of FOP and PANO, respectively. As Powers and Glasser's interests in their official capacities do not differ from those of FOP and PANO, the Court's discussion regarding the "Police Associations" addresses arguments they assert in their official capacities.

represent the interests of NOPD officers.[22] These organizations advocate for their members' interests in various situations, including employment disputes, civil service appeals, and civil and criminal litigation.[23] Neither association has a collective bargaining agreement with the City.[24] Because the issues raised in both motions are sufficiently similar, the Court analyzes them together. The Police Associations both seek intervention as of right, or, in the alternative, permissive intervention. Powers and Glasser, sworn NOPD officers, also seek to intervene in their individual capacities. The Court will address Powers and Glasser separately from the Police Associations.[25]

With respect to the first requirement for intervention as of right, there is no dispute as to the timeliness of the Police Association's motions to intervene. With respect to the "interest" requirement, the Police Associations assert that, because the members of the NOPD are protected by Civil Service under Article X, Section 8 of the Louisiana Constitution, they have a property right in their employment that is sufficient to satisfy the "substantial and legally protectable interest" requirement for intervention.[26] The Police Associations further assert that, as associations, they have standing to sue on behalf of their members.[27] In addition, FOP asserts that the NOPD officers have an interest sufficient to support intervention because the proposed Consent Decree is binding on the NOPD officers

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[22] *See* R. Doc. 9-2 at p. 2; R. Doc. 13-1 at p. 3.

[23] R. Doc. 9-2 at p. 2; R. Doc. 13-1 at p. 3.

[24] *See* R. Doc. 9-2 at p. 2; R. Doc. 27 at p. 10.

[25] *See* pp. 22-23, *infra*.

[26] *See* R. Doc. 9-2 at p. 6; R. Doc. 13-1 at p. 5.

[27] R. Doc. 9-2 at p. 7; R. Doc. 13-1 at pp. 5-6 (each citing *Central and South West Serv., Inc. v. U.S. E.P.A.*, 220 F.3d 683, 698 (5th Cir. 2008)).

as employees and because the mandates set forth in the proposed Consent Decree directly affect the officers.[28]

The Police Associations are correct that their NOPD officer members, by virtue of their status as civil servants, have a property interest in their jobs. *See Wallace v. Shreve Memorial Library*, 79 F.3d 427, 431 (5th Cir. 1996); *Moore v. Ware*, 839 So.2d 940 (La. 2003); *Bell v. Dept. of Health and Human Resources*, 483 So. 2d 945, 949-950 (La. 1986), *cert. denied,* 479 U.S. 827, 107 S. Ct. 105,(1986). Nonetheless, the Court does not agree that the NOPD officer members – and thus the Police Associations – have the legally protectable interest *in the subject matter of this litigation* required for intervention as of right.

The Police Associations cite *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) in support of their argument that the NOPD officers, as Civil Service employees, may intervene to protect their vested interests. Although FOP acknowledges that the "*Edwards* Court did not directly address the issue of civil service property rights as a basis for intervention,"[29] it urges the Court to read *Edwards* as authorizing the Police Associations' intervention under an impairment of property rights theory. FOP argues that "the police officers who sought intervention were civil servants and . . . the proposed consent decree in Edwards . . . superseded some applicable provision of the Texas and Police Civil Service Act."[30] However, the *Edwards* Court did not permit the appellants to intervene under an impairment of property rights theory, but instead because of the preclusive effects of Title

[28] R. Doc. 9-2 at p. 7.

[29] R. Doc. 40 at p. 3.

[30] R. Doc. 40 at p. 3.

VII. *Ed*wards is inapplicable given the facts of this action.

The consent decree at issue in *Edwards* resolved a Title VII employment discrimination lawsuit filed against the City of Houston, Texas, regarding racially-based job promotions within the Houston Police Department ("HPD"). In order to remedy past discrimination by the HPD against its own employees, the original parties to the lawsuit proposed that a specific number of promotions would be guaranteed to African-American and Hispanic-American officers. Organizations representing officers who were not members of those minority groups moved to intervene. The would-be intervenors argued that such a plan guaranteeing promotions to officers of certain minority groups denied other officers the ability to advance within the HPD. The organizations argued that officers wishing to intervene had a constitutional right to a promotion system that was "without reference to race, color, or national origin." Edwards, 78 F.3d at 1004. The district court denied the motions to intervene and the would-be intervenors appealed. The Fifth Circuit reversed the district court and allowed the organizations to intervene, citing the preclusive effect of 42 U.S.C. § 2000e-2(n)[31] that would prohibit the non-party officers – if they were

[31] At the time the Fifth Circuit was considering *Edwards*, the relevant portion of 42 U.S.C. § 2000e-2(n) stated:

> (1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws **may not be challenged** under the circumstances described in subparagraph (B).
>
> (B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws –
>
> > (I) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had –
> >
> > > (I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such

not allowed to intervene – from collaterally challenging the consent decree after the district court approved it.[32] Because Section 2000e-2(n) precluded the would-be intervenors from filing any future lawsuit to contest allegedly discriminatory employment practices perpetrated against them, the Fifth Circuit found that such practices would "become unassailable by these applicants and their privies." *Id.* at 1002.

The *Edwards* consent decree resolved complaints of employment discrimination against police department employees under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e). The notice provision set forth in 42 U.S.C. § 2000e-2(n)(1) only applies to consent decrees brought under Title VII ("[A]n employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged . . . . ."). 42 U.S.C. § 2000e-2(n)(1)(A). The complaint seeking entry of the proposed NOPD Consent Decree is brought under Title VI of the Civil Rights Act of 1964

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judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

Edwards, 78 F.3d at 996 (quoting 42 U.S.C. § 2000e-2(n)(1)) (emphasis added).

[32] The Fifth Circuit in *Edwards* provides an extensive overview of the legislative and jurisprudential history of 42 U.S.C. § 2000e-2(n). *See Edwards*, 78 F.3d at 995-99. In essence, Congress enacted subsection (n) because " '[o]nce an employment dispute has reached the courts, the parties, all nonlitigants with a stake in the outcome, and the public have a strong interest in bringing the litigation to an expeditious end. [Accordingly], all related interests and claims should be adjudicated *in one proceeding*.' " *Id.* at 997 (quoting H.R.Rep. part 1 at 53, reprinted in 1991 U.S.C.C.A.N. at 591) (emphasis and alterations in original).

Subsection (n) provides non-parties notice of, and an opportunity to be heard at, a fairness hearing regarding the type of consent decree at issue in *Edwards*. However, subsection (n) further prohibits non-parties from filing "a new, independent lawsuit challenging the implementation of a court-approved consent decree." *Id.* at 998. Congress specifically drafted subsection (n) "to preclude such successive litigation." *Id.*

(regarding discrimination by government agencies receiving federal funds; 42 U.S.C. § 2000d to 2000d-7), as well as the Violent Crime Control and Law Enforcement Act (42 U.S.C. § 14141) and the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d). These statutes do not contain any preclusive language analogous to 42 U.S.C. § 2000e-2(n)(1). Moreover, the proposed Consent Decree does not remedy complaints about the NOPD discriminating against its own employees in violation of Title VII, and the Police Associations do not seek to challenge any alleged incidents of Title VII employment discrimination. Instead, the complaints to be remedied are Title VI non-employment claims having to do with the NOPD's practices with respect to citizens. *Edwards* is inapposite to this case. Consequently, it provides no authority for the Police Associations to intervene.

The Court recognizes that the proposed Consent Decree does reference the Civil Service system, and, as discussed above, that officers do have a property right in their employment. Nevertheless, as it is currently written, the proposed Consent Decree in no way modifies the Civil Service system for NOPD officers. The proposed Consent Decree provides that (1) NOPD "agrees to work with Civil Service" to develop an NOPD-specific system for performance evaluations and new promotions practices that comport with best practices and the proposed Consent Decree;[33] (2) NOPD and the City, working with the Civil Service, agree to develop and implement a comprehensive recruitment program; and (3) the City shall restructure the NOPD's secondary employment system and that only officers having attained certain Civil Service designations may work secondary employment.[34]

[33] *See* R. Doc. 2-1, pars. 295-305.

[34] *See id.*, Section IX.

However, the Police Associations have not indicated how these provisions of the proposed Consent Decree would impact or impair any of their property rights guaranteed under the Civil Service system, and the Court does not read these references as impacting or impairing such rights.

At oral argument the Court requested additional briefing from the City and the United States to address this issue. The Parties responded that the anticipated changes to NOPD policies will in no way affect any vested rights.[35] As the City states in its supplemental memorandum,

> The proposed Consent Decree does not purport to make any changes to the existing rules of the [Civil Service Commission of the City of New Orleans]. The proposed Consent Decree addresses NOPD polices and procedures, which are separate from the CSC rules promulgated to ensure that all classified employees are guaranteed due process with regard to their employment positions.[36]

Thus, the proposed Consent Decree does not affect NOPD officers' property interests in their employment. Consequently, the Police Associations are not entitled to intervene as of right pursuant to a property rights theory.

Nevertheless, the Court underscores, the City and the United States cannot use the proposed Consent Decree as a means of legally sanctioning a violation of the Civil Service rules. The changes to NOPD policies required by the proposed Consent Decree will be clarified during the implementation phase of the Consent Decree. If changes are proposed to any NOPD policies that may conflict with the Civil Service rules and procedures, FOP

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[35] *See* R. Docs. 53 and 56.

[36] R. Doc. 56 at p. 1.

and/or PANO may move to intervene for the limited purpose of asserting their Civil Service property rights. Given the circumstances of this case, and the denial of the Police Associations' motions to intervene at this stage of the proceedings, the Court will give due deference to the Police Associations' arguments that such motions to intervene are timely under Fed. R. Civ. P. 24(b).

In addition, the Police Associations cite *United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002), the case involving the consent decree to reform the Los Angeles Police Department ("LAPD"), in which the Ninth Circuit held that the police union was entitled to intervention as of right. In *City of Los Angeles*, the Court analyzed the police union's interest as follows:

> Except as part of court-ordered relief after a judicial determination of liability, an employer cannot unilaterally change a **collective bargaining agreement** as a means of settling a dispute over whether the employer has engaged in constitutional violations. *Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 528-30, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986) (noting that parties settling their own dispute cannot impose obligations on third parties and that "a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree"); *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 771, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) ("Absent a judicial determination, the [EEOC], not to mention the Company, cannot alter the collective bargaining agreement without the Union's consent."); *United States v. City of Hialeah*, 140 F.3d 968, 975 (11th Cir.1998); *United States v. City of Miami*, 664 F.2d 435, 441-42 (5th Cir.1981).
>
> Thus, the Police League's interest in the consent decree is two-fold. To the extent that it contains or might contain provisions that contradict terms of the officers' **MOU**, the Police League has an interest. Further, to the extent that it is disputed whether or not the consent decree conflicts with the **MOU**, the Police League has the right to present its views on

> the subject to the district court and have them fully considered in conjunction with the district court's decision to approve the consent decree. *See EEOC v. AT & T*, 506 F.2d 735, 741-42 (3d Cir.1974).

288 F.3d at 400 (emphasis added). Unlike the Police League in *City of Los Angeles*, the Police Associations seeking intervention in this case do not have a collective bargaining agreement or memorandum of understanding with the City. This distinction is important because no contractual rights of the NOPD officer members are threatened or impaired by the proposed Consent Decree.

The FOP has represented that it is "not opposed to the entry of the Consent Decree as such . . . . They do, however, want a role in implementing its directives."[37] At oral argument, counsel for PANO also acknowledged that the organization supported the objectives that the City and United States were pursuing in negotiating the proposed Consent Decree.[38] Clearly, both the Police Associations and the United States are in favor of constitutional policing through the proposed Consent Decree. The Police Associations have not met the interest requirement for intervention as of right and this is why their requests have been denied. The Court notes further that the proposed intervenors have not shown that the United States will inadequately represent their interests at this stage of the proceedings. The United States, as a governmental entity, is presumed to represent its citizens' interests. To overcome this presumption, the proposed intervenors have the burden of proving that their interests are not represented by the United States. Both the United States and the Police Associations are interested in seeing the Consent Decree put

[37] R. Doc. 40 at p. 8.

[38] R. Doc. 47 at 25.

into place, although they may differ on some aspects of implementation that, for the most part, have yet to be articulated.

The Police Associations have also sought permissive intervention pursuant to Rule 24(b). However, the Court finds that permissive intervention by the Police Associations is not appropriate because such intervention would unduly delay these proceedings. The Court has provided ample opportunity for the Police Associations to assist the Court in its consideration of the proposed Consent Decree without prejudicing the parties or delaying the proceedings.

D. Powers and Glasser's Motions to Intervene

Powers and Glasser are sworn NOPD officers, and they have moved to intervene in their individual capacities. Again, as officers Powers and Glasser are protected by Civil Service under Article X, Section 8 of the Louisiana Constitution, they have a property right in their employment. Nonetheless, as discussed above with respect to the Police Associations, the proposed Consent Decree does not impair their property rights at this time. For the same reasons, Powers and Glasser do not have a legally protected interest that would authorize their intervention of right at this time. Concomitantly, the Court finds in its discretion that permissive intervention by Powers and Glasser is not appropriate because such intervention would unduly delay these proceedings.

Conclusion

In conclusion, the Court recognizes the importance of the goals that the City and United States seek to achieve through implementation of the proposed Consent Decree, as well as the sincere interest of those organizations and individuals seeking to intervene. The

City and the United States have studied the NOPD and drafted a Consent Decree of historic proportions, with extensive input from stakeholders in the process. Nevertheless, before approving the Consent Decree this Court must be convinced that it is fair, reasonable and adequate after a rigorous examination of its provisions, including consideration of the comments of the public and the proposed Intervenors. The Court will not rubber stamp any plan that does not meaningfully address the legitimate concerns expressed by the OIPM, IPM, CUC and the Police Associations.

The Court has provided ample opportunity for the proposed Intervenors and members of the community to assist the Court in its consideration of the proposed Consent Decree without prejudicing the parties or delaying the proceedings. The Court has allowed any person wishing to comment upon the proposed Consent Decree to do so by filing a written submission no more than 20 pages in length.[39] The Court will consider all such written submissions in the nature of *amicus* briefs as part of its consideration of the fairness, adequacy, and reasonableness of the proposed Consent Decree. In addition, the Court will allow the OIPM, CUC, FOP and PANO to participate, as set forth in this Order, in the hearing on the proposed Consent Decree, which is scheduled for September 12, 2012 at 10:00 a.m. (the "Fairness Hearing").[40]

Order

For the reasons set forth above,

IT IS ORDERED that the Motions to Intervene by OIPM, IPM, Hutson, and CUC

[39] R. Doc. 7 at p. 3.

[40] *See* p. 25, *infra*.

be and hereby are **DENIED**.

IT IS FURTHER ORDERED that the Motions to Intervene by the FOP, PANO, Powers, and Glasser be and hereby are **DENIED**. However, if the proposed Consent Decree is approved, the Court will consider renewed motions to intervene by the FOP, PANO , Powers and Glasser during the implementation phase of the Consent Decree if the United States, the City and/or NOPD seek to make changes which may implicate the Civil Service or other legally protected rights afforded to members of FOP and PANO.

The Court is of the opinion that the knowledge and experience of the organizations seeking to intervene in this case (OIPM, CUC, FOP, and PANO) will be of assistance to the Court in making its determination of the fairness, adequacy, and reasonableness of the proposed Consent decree. Accordingly, the Court has requested written comments[41] from the proposed Intervenors regarding the terms of the proposed Consent Decree pursuant to the Court's previous order.[42] In addition,

IT IS ORDERED that the Court will allow the proposed Intervenors to participate in the Fairness Hearing scheduled for September 12, 2012 at 10:00 a.m. in the following manner:

1. First, the OIPM, CUC, FOP, and PANO each will have a total of **thirty (30) minutes** during which to offer the live testimony of witnesses and to offer documentary evidence relating to the organization's objections to the approval of the proposed Consent Decree. These organizations should

[41] The Court will treat these comments in the nature of amicus briefs.

[42] R. Doc. 7 (Order of the Court dated July 31, 2012).

be mindful that the purpose of the Fairness Hearing is to assist the Court in determining whether the proposed Consent Decree is "fair, adequate, and reasonable;" thus, the testimony should be related to those issues.

2. Second, the OIPM, CUC, FOP and PANO may submit proposed questions they would like the Court to ask the United States or the City at the Fairness Hearing. Proposed questions must be submitted to the Court via email at **efile-Morgan@laed.uscourts.gov** no later than **twenty-four (24) hours prior to the Fairness Hearing.**

New Orleans, Louisiana, this ____ day of August, 2012.

SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

EXHIBIT Q

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE CITY OF PORTLAND,
Defendant.

Civil Case No. 3:12-CV-02265-SI

MEMORANDUM IN SUPPORT OF INTERVENER-DEFENDANT PORTLAND POLICE ASSOCIATION'S FRCP 24 MOTION TO INTERVENE

Table of Contents

Table of Authorities

Cases

Statutes

Rules

I. INTRODUCTION.

Plaintiff United States of America ("United States") has filed suit against the City of Portland ("City"), alleging that the City's police officers systematically use excessive force against persons with actual or perceived mental illnesses. The police officers are members of a labor union, the Portland Police Association ("PPA"). As part of this action, the United States and the City have entered into a proposed settlement agreement that would materially alter the PPA's collective bargaining agreement and state law collective bargaining rights. Indeed, in their 77-page settlement agreement, the United States and the City have agreed to sweeping changes to Portland Police Bureau standards, policies, and procedures that significantly undermine the collective bargaining rights of the PPA and its members. The liberal standards of intervention under Fed. R. Civ. P. 24 provide the PPA with the right to intervene in this action.

II. BACKGROUND.

The PPA is a labor union that represents a bargaining unit of police officers, sergeants, criminalists, and detectives employed by the City. (Declaration of Anil S. Karia ("Karia Decl.") at ¶ 5). The PPA and the City are parties to a collective bargaining agreement that governs the terms and conditions of employment for police officers in the bargaining unit. (Karia Decl. at ¶ 6 and Ex. A). Under Oregon's Public Employee Collective Bargaining Act, ORS 243.650-243.782 ("PECBA"), the City and the PPA must collectively bargain in good faith over the terms and conditions of employment for the PPA's members.

On December 17, 2012, the United States filed a Complaint against the City under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, alleging a pattern and practice of unconstitutional force by the City's police officers against persons with actual or

perceived mental illnesses. (Compl. at ¶ 1, Docket No. 1). As a remedy, the United States seeks injunctive relief against the City and its police officers, including a declaration that the City has engaged in a pattern or practice of depriving individuals of their constitutional rights; an order enjoining the City and its police officers from engaging in excessive force; and an order requiring the City and its police officers to adopt, implement, and abide by policies and procedures that would remedy the pattern or practice of constitutional violations. (Compl. at ¶¶ 22-24).

The United States and the City have asked this court to approve a settlement agreement between the United States and the City ("Settlement Agreement"). Under the Settlement Agreement, this court would conditionally dismiss the complaint pursuant to Fed. R. Civ. P. 41 (a)(2) and place the action on the court's inactive docket pending the parties' performance of the terms of the Settlement Agreement. (Joint Mot. To Enter The Parties' Settlement Agreement; Docket No. 3). The PPA is not a party to the Settlement Agreement, and was excluded from the negotiations that resulted in the Settlement Agreement. (Karia Decl. at ¶ 7).

As more fully explained below, the Settlement Agreement requires the City to implement changes that violate the collective bargaining agreement between the PPA and the City. The Settlement Agreement also alters terms and conditions of employment without requiring the City to bargain in good faith with the PPA over those mandatorily negotiable bargaining subjects as required by the PECBA.

Well-established case law in the Ninth Circuit instructs that the PPA has a protectable interest in the merits and remedies of the Complaint and Settlement Agreement because: the Complaint seeks injunctive relief against members of the PPA; the Complaint raises factual

allegations that the PPA's members have committed unconstitutional acts in the line of duty; and the Settlement Agreement seeks remedies which contradict the terms of the labor agreement between the PPA and the City and infringe on state-law bargaining rights.

III. ARGUMENT.

A. The PPA is entitled to intervene as a matter of right.

The PPA satisfies each element of the four-part test for determining when intervention as of right under Fed. R. Civ. P. 24(a) is warranted. Under this test, the PPA must show that:

(1) Its motion is timely;

(2) It has a "significant protectable interest relating to the property or transaction that is the subject of the action;"

(3) It is so situated that "the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest;" and

(4) The "existing parties may not adequately represent the applicant's interest."

U.S. v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002).

The test is applied liberally and in favor of potential interveners. *Id.* at 397-398. "By allowing parties with a *practical* interest in the outcome of a particular case to intervene, [courts] often prevent or simplify future litigation involving related issues; at the same time, [courts] allow an additional interested party to express its views before the court." *Id*. (emphasis in original; internal quotations omitted). A court's analysis is guided "primarily by practical and equitable considerations, not technical distinctions." *Sw. Ctr. for Biological Diversity v. Berg,* 268 F.3d 810, 818 (9th Cir. 2001) (internal quotations omitted). When ruling on a motion to intervene, "[c]ourts are to take all well-pleaded, nonconclusory allegations in the motion to

intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true[.]" *Id*. at 820.

1. The PPA's motion to intervene is timely.

To assess timeliness, the court examines: (1) the stage of litigation; (2) the prejudice to other parties; and (3) the reason for and length of any delay. *San Jose Mercury News, Inc. v. U.S. Dist. Court -N. Dist. (San Jose)*, 187 F.3d 1096, 1101 (9th Cir. 1999). A motion to intervene may be filed at either the merits phase or the remedial phase of the litigation. *See City of Los Angeles*, 288 F.3d at 399-400 (finding that labor union representing Los Angeles police officers had right to intervene in both phases of litigation where the United States and City of Los Angeles entered into consent agreement to settle complaint); *Ore. Nat. Desert Ass'n v. Shuford*, No. CV 06–242–AA, 2006 WL 2601073 at *2-*5 (D. Or., Sept. 8, 2006) (the court permitted Harney County to intervene in the remedial phase of the litigation).

Here, the PPA filed this motion the day after the United States filed its Complaint and the Settlement Agreement. The litigation is in its early stages; no discovery has been had and no dispositive motions have been filed or decided. Neither the United States nor the City have any basis to assert prejudice, and there has been no delay. The PPA's motion is timely. *See City of Los Angeles*, 288 F.3d at 398 (union filed its motion to intervene one-and-a-half months after suit was filed); *San Jose Mercury News, Inc.*, 187 F.3d at 1101 (finding motion to intervene timely filed twelve weeks after basis for intervening occurred); *Nikon Corp. v. ASM Lithography B.V.*, 222 F.R.D. 647, 649-50 (N.D. Cal. 2004) (motion timely when no dispositive motions have been decided); *EEOC v. Thompson*, No. CV 03-64-HA, 2003 WL 23538025 at *2 (D. Or., July 15,

2003) (motion filed over five months after suit initiated and during early stages of discovery was timely).

2. The PPA has significant, protectable interests in the subject of this litigation.

The second prong of the intervention analysis requires that the PPA possess an interest relating to the property or transaction that is the subject matter of the litigation. The PPA has a significant protectable interest in an action if it asserts an interest that is protected under some law, and there is a relationship between its legally protected interest and the plaintiff's claims. *City of Los Angeles*, 288 F.3d at 398.

The relationship requirement is met "if the resolution of the plaintiff's claims actually will affect the applicant." *Id.* The "interest" prong is not a clear-cut or bright-line rule, because "[n]o specific legal or equitable interest need be established." *Id*. Instead, the interest prong directs courts to make a "practical, threshold inquiry," and "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id*. (internal quotations and citations omitted).

The Ninth Circuit has previously held that a labor union, such as the PPA, has a legally protectable interest in both the merits and remedies of litigation between the United States and an employer when that litigation impacts state-law collective bargaining obligations. In *City of Los Angeles*, a case nearly identical to the one at hand, the United States alleged that the City of Los Angeles engaged in a pattern or practice of depriving individuals of constitutional rights through the use of excessive force, false arrests, and improper searches and seizures in violation of 42 U.S.C. § 14141. Before filing suit, the parties agreed to enter into a consent decree that would resolve the suit. Accordingly, on the same day that the United States filed the complaint, the

parties filed a "Joint Application to Enter Consent Decree" and lodged a proposed consent decree with the district court. *City of Los Angeles,* 288 F.3d at 396.

The Los Angeles Police Protective League ("Police League"), the labor union representing the Los Angeles police officers, responded by moving to intervene in the action. The Police League claimed that the consent decree was incompatible with the labor agreement between the Police League and the City. The district court denied the Police League's motion to intervene as a matter of right and its motion, in the alternative, for permissive intervention. *Id.*

The Ninth Circuit Court of Appeals reversed, holding that the Protective League had a protectable interest in the merits and remedies of the case because the complaint: (1) sought injunctive relief against members of the Protective League; (2) raised factual allegations that the member officers had committed unconstitutional acts in the line of duty; and (3) sought remedies which could affect terms of the labor agreement between the Protective League and the City under which members of the Police League were employed. *Id.* at 399.

With respect to the Protective League's interest in the merits of the litigation, the court explained that the allegations in the complaint alone provided the police union with a protectable interest:

> [T]he Police League claims a protectable interest because the complaint seeks injunctive relief against its member officers and raises factual allegations that its member officers committed unconstitutional acts in the line of duty. These allegations are sufficient to demonstrate that the Police League had a protectable interest in the merits phase of the litigation.

Id. at 399.

Further, the court explained that the police union had a separate, independent protectable interest in the remedy sought by the United States because the consent decree conflicted with

provisions of the labor agreement between the City of Los Angeles and the police union and also infringed on state-law bargaining rights:

> The Police League has state-law rights to negotiate about the terms and conditions of its members' employment as LAPD officers and to rely on the collective bargaining agreement that is a result of those negotiations. These rights give it an interest in the consent decree at issue. Thus, the Police League's interest in the consent decree is two-fold. To the extent that it contains or might contain provisions that contradict terms of the officers' [collective bargaining agreement], the Police League has an interest. Further, to the extent that it is disputed whether or not the consent decree conflicts with the [collective bargaining agreement], the Police League has the right to present its views on the subject to the district court and have them fully considered in conjunction with the district court's decision to approve the consent decree.

Id. at 400 (citation omitted).

Here, the PPA has a protectable interest in the merits of the underlying action brought by the United States. As in *City of Los Angeles*, the United States has alleged that the City of Portland has engaged in a pattern or practice of depriving individuals of their constitutional rights through excessive force, in violation of 42 U.S.C. § 14141. The United States seeks injunctive relief against police officers who are members of the PPA (Compl. at ¶¶ 4, 11, 21-24) and raises factual allegations that the member officers committed unconstitutional acts in the line of duty (Compl at ¶¶ 1, 8-11, 16, 17, 19, 20). Thus, like the union in *City of Los Angeles*, the PPA has a protectable interest in the merits of the dispute between the United States and the City.

Further, the PPA has a separate, independent protectable interest in the remedy sought by the United States because the Settlement Agreement conflicts with provisions of the PPA-City collective bargaining agreement and also infringes on state-law bargaining rights. In the words of the United States, the Settlement Agreement:

> *[R]equires* the City and PPB to implement numerous reforms in the following areas to address the alleged systemic deficiencies: use of force policy, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement and oversight. Among other things, *[the City] has agreed* to revise PPB's use of force policies, restructure crisis intervention efforts, implement new training standards, refine officer accountability systems, and shorten the timeframe for resolving misconduct investigations and citizen complaints, while maintaining the quality of investigations, as well as solicit public input in the reform process.

(Mem. in Supp. of Joint Mot. To Enter The Parties' Settlement Agreement at 5-6, Docket No. 4; emphasis added). That is, the United States is *requiring* the City to modify its policies, practices, and procedures, which has significant collective bargaining ramifications. And the City *has already agreed* to implement those changes before broaching, let alone satisfying, its collective bargaining obligations with the PPA.

The mandates of the Settlement Agreement conflict with the PPA's collective bargaining agreement with the City. Those conflicts are best illustrated by the grievance that the PPA has filed with the City. (Karia Decl. at ¶ 8 and Ex. B). By way of background, the PPA and City are parties to a collective bargaining agreement that "has as its purpose the promotion of harmonious relations between the City and the [PPA]; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work and other conditions of employment." (Karia Decl. at Ex. A, p. 7). The PPA-City collective bargaining agreement contains a grievance procedure for resolving "any grievances or complaints that might arise out of the application of this Contract." (Karia Decl. at Ex. A, p. 14). The grievance procedure culminates in "final and binding" arbitration before a private arbitrator mutually selected by the PPA and the City. (Karia Decl. at Ex. A, p. 14).

On November 27, 2012, the PPA filed a grievance under the collective bargaining agreement after the City notified the PPA that it had entered into the Settlement Agreement with the United States. (Karia Decl. at ¶ 8 and Ex. B at 1). The grievance alleges that in so doing, the City knowingly, willfully, and in bad faith altered mandatory bargaining subjects without first coming to agreement with the PPA, in violation of the collective bargaining agreement and the implied duty of good faith and fair dealing. (Karia Decl. at Ex. B, p. 1). The mandatory bargaining subjects at issue include without limitation, wages, monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, discipline, disciplinary procedures, job security, fundamental fairness, the right to legal and union representation, and recordation of officer statements. (Karia Decl. at Ex. B, p. 1).

In addition, the PPA set out in its grievance the following non-exhaustive list setting forth how certain provisions of the Settlement Agreement before this court violate specific provisions of the PPA-City collective bargaining agreement:

Provision of City-USDOJ Agreement	Description of City-USDOJ Agreement	Articles and Description of PPA-City Collective Bargaining Agreement Violated
Section I (General Provisions), Para. 6	"This [City-USDOJ] Agreement is not intended to impair . . . the right of any person or organization seeking relief against the City , PPB, or any officer or employee thereof[.]"	Articles 3, 9, 15, 20, 21, 59, 61, 62 and others; and the implied duty of good faith and fair dealing. The City has acted in bad faith and has impaired the PPA's rights under the CBA by unilaterally altering specific provisions of the CBA and unilaterally implementing changes to mandatorily negotiable subjects without first reaching agreement with the PPA, as more fully set forth below.
Section I (General Provisions), Para. 8	"The purpose of this [City-USDOJ] Agreement is to ensure that the City and PPB . . . undertake the actions required by the [City-USDOJ] Agreement[.]"	Articles 3, 9, 15, 20, 21, 59, 61, 62 and others; and the implied duty of good faith and fair dealing. The City has acted in bad faith, has unilaterally altered specific provisions of the CBA, and has unilaterally implemented changes to mandatorily negotiable subjects without first reaching agreement with the PPA, as more fully set forth below.
Section III.A (Use of Force Policy)	The City has agreed to implement widespread changes to the PPB's general force policies and standards.	Article 3. The City has unilaterally implemented changes to the PPB's general force policies and standards that implicate mandatory bargaining subjects without first reaching agreement with the PPA. The mandatorily negotiable decisions and impacts include, without limitation, working conditions, safety, safety-related training, safety-related staffing, discipline, disciplinary procedures, and job security.

		Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard.
Section III.A.1 (Electronic Control Weapons)	The City has agreed to implement widespread changes to the PPB's Taser/ECW policies and standards.	Article 3. The City has unilaterally implemented changes to the PPB's Taser/ECW policies and standards that implicate mandatory bargaining subjects without first reaching agreement with the PPA. The mandatorily negotiable decisions and impacts include, without limitation, working conditions, safety, safety-related training, safety-related staffing, discipline, disciplinary procedures, and job security. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard.
Section III.A.2 (Use of Force Reporting Policy and Use of Force Report)	The City has agreed to implement widespread changes to the PPB's use of force reporting and review policies and standards.	Article 3. The City has unilaterally implemented changes to the PPB's use of force reporting policies and standards that implicate mandatory bargaining subjects without first reaching agreement with the PPA. The mandatorily negotiable decisions and impacts include, without limitation, hours, working conditions, safety, safety-related training, safety-related staffing, discipline, disciplinary procedures, job security, fundamental fairness, recordation of officer statements, the right to legal and union representation, and workload.

		Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard. Article 61. The City has altered the administrative and criminal investigation standards. Article 62. The City has altered the IPR investigation standards.
Section III.B (Compliance Audits Related to Use of Force)	The City has agreed to audit use of force incidents based on new policies and standards.	Article 3. The City has unilaterally implemented changes to the PPB's use of force reporting policies and standards that implicate mandatory bargaining subjects without first reaching agreement with the PPA. The mandatorily negotiable decisions and impacts include, without limitation, discipline, disciplinary procedures, and job security. For instance, because the City will reserve the right to discipline employees for any perceived patterns of policy violations or unsatisfactory performance revealed through use of force audits, there will necessarily be a resulting change in disciplinary standards and job security. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard and the permissible uses of EIS.

		Article 61. The City has altered the administrative and criminal investigation standards. Article 62. The City has altered the IPR investigation standards.
Section IV (Training)	The City has agreed to implement new policies and standards for the training division.	Article 3. The City has unilaterally implemented changes to the PPB's training division policies and standards that implicate mandatory bargaining subjects without first reaching agreement with the PPA. The mandatorily negotiable decisions and impacts include, without limitation, safety, safety-related training, discipline, disciplinary procedures, and job security. For instance, the PPB will train officers on new use of force standards that jeopardize officer safety; the PPB will not provide sufficient safety-related training; the PPB will use an officer's prior instances of force for which the officer was not disciplined to prohibit or remove an officer from a training division assignment, thereby implicating discipline and job security; and the PPB will discipline a training officer for ineffective training. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20, 21, and 61. The City has agreed to train supervisors on "appropriate disciplinary sanctions," which alters the just cause standard and the disciplinary investigation process. This City will also discipline a training officer for ineffective training outside the bounds of just cause. Article 59. The PPB will train supervisors on performance evaluations and may alter

		performance evaluations based on quarterly training reviews even though the City has not bargained to completion over the performance evaluation system.
Section V (Community-Based Mental Health Services)	The City has agreed to implement structural changes to community-based mental health services over which it has no control.	Article 3. The City has agreed to implement structural changes to community-based mental health services over which it has no control. As a result, the PPA's members will be first-line responders to individuals in mental health crises and will be unreasonably limited in the force tools available to them to safely resolve incidents given other provisions of the City-USDOJ agreement, thereby implicating on-the-job safety, safety-related training, safety-related staffing, discipline, and job security. The City has agreed to these changes without first coming to agreement with the PPA over those mandatorily negotiable subjects. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.A (Addictions and Behavioral Health Unit and Advisory Committee)	The City has agreed to implement new units and expand existing units.	Article 3. The City has implemented a new Addictions and Behavioral Health Unit (ABHU) and new Crisis Intervention Team (CIT), and has expanded the existing the Mobile Crisis Prevention Team (MCPT) and the Service Coordination Team (SCT) without first coming to agreement with the PPA over mandatorily negotiable subjects. Creating new units and expanding existing units implicates mandatory bargaining decisions and impacts, including without limitation wages, monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, discipline, job security, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended

		policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.B (Continuation of C-I Program)	The City has agreed to provide additional crisis intervention training.	Article 3. The City has implemented additional crisis intervention training without first coming to agreement with the PPA over the mandatorily negotiable subjects of safety and safety-related training. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.C (Establishing "Memphis Model" Crisis Intervention Team)	The City has agreed to implement a new unit Crisis Intervention Team unit.	Article 3. The City has implemented a new Crisis Intervention Team without first coming to agreement with the PPA over mandatorily negotiable subjects. Creating new units implicates mandatory bargaining decisions and impacts, including without limitation wages, monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, discipline, job security, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.D (Mobile Crisis Prevention Team)	The City has agreed to expand the Mobile Crisis Prevention Team.	Article 3. The City has expanded the existing Mobile Crisis Prevention Team (MCPT) without first coming to agreement with the PPA over mandatorily negotiable subjects. Expanding existing units implicates mandatory bargaining decisions and impacts, including without limitation wages, monetary benefits, hours, working conditions,

		workload, safety, safety-related training, safety-related staffing, discipline, job security, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.E (Service Coordination Team)	The City has agreed to expand the Service Coordination Team.	Article 3. The City has expanded the existing Service Coordination Team (SCT) without first coming to agreement with the PPA over mandatorily negotiable subjects. Expanding existing units implicates mandatory bargaining decisions and impacts, including without limitation wages, monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, discipline, job security, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VI.F (BOEC)	The City has agreed to changes to BOEC dispatching.	Article 3. The City has agreed to implement changes to BOEC dispatching, including protocols for routing calls to patrol officers or to community-based mental health services which do not exist. As a result, the PPA's members will be first-line responders to individuals in mental health crises and will be unreasonably limited in the force tools available to them to safely resolve incidents given other aspect of the City-USDOJ agreement, thereby implicating on-the-job safety, safety-related training, safety-related staffing, discipline, and job security. The City has agreed to these changes without first coming to agreement with the PPA over those mandatorily

		negotiable subjects. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.
Section VII (Employees Information System)	The City has agreed to changes to its Employees Information System.	Article 3. The City has expanded the use and scope of its EIS system without first coming to agreement with the PPA over the mandatorily negotiable subjects of discipline and job security. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Article 21.4 prohibits the City from using EIS reports "for disciplinary, transfer or promotion decisions." Nevertheless, the City will use EIS for those purposes.
Section VIII.A (Officer Accountability - Investigation Timeframe)	The City has agreed to complete administrative investigations of officer misconduct within 180 days of receipt or discovery of a complaint.	Article 3. The City has implemented a new investigation timeline in which it complete administrative investigations of officer misconduct within 180 days of receipt or discovery of a complaint without first coming to agreement with the PPA over mandatorily negotiable subjects, including discipline, disciplinary procedures, and job security. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts.

		Articles 20 and 21. The City has altered the just cause standard, including the due process component that calls for full, fair, and timely investigations. Article 61. The City has altered the administrative and criminal investigation standards and procedures. Article 62. The City has altered the IPR investigation standards and procedures.
Section VIII.B (Officer Accountability - On-Scene Public Safety Statements and Interviews)	The City has agreed to changes to its standards, policies, and procedures regarding compelled and voluntary statements in force incidents, including deadly force incidents.	Article 3. The City has changed its standards, policies, and procedures regarding compelled and voluntary statements in force incidents, including deadly force incidents, without first coming to agreement with the PPA over mandatorily negotiable subjects, including discipline, disciplinary procedures, job security, the right to legal and union representation, recordation of officer statements, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard. Article 61. The City has altered the administrative and criminal investigation standards and procedures. Article 62. The City has altered the IPR investigation standards and procedures.

Section VIII.C (Officer Accountability - Conduct of IA Investigations)	The City has agreed to changes to IA and IPR investigations and PRB reviews.	Article 3. The City had changed its standards, policies, and procedures regarding IA and IPR investigations and PRB reviews without first coming to agreement with the PPA over mandatorily negotiable subjects, including discipline, disciplinary procedures, job security, the right to legal and union representation, recordation of officer statements, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard. In addition, Article 21.4 prohibits the City from using EIS reports "for disciplinary, transfer or promotion decisions." Nevertheless, the City will use EIS for those purposes. Article 61. The City has altered the administrative and criminal investigation standards and procedures, including without limitation the provisions regarding the PRB in Article 61.10. Article 62. The City has altered the IPR investigation standards and procedures, including without limitation implementing the right of IPR to independently compel officer interviews.
Section VIII.D (Officer Accountability - CRC Appeals)	The City has agreed to expand the authority of CRC and the scope of CRC appeals.	Article 3. The City has changed its standards, policies, and procedures regarding the authority of CRC and the scope of CRC appeals without first coming to agreement with the PPA over mandatorily negotiable subjects, including discipline, disciplinary procedures, job security, the right to legal and union representation, recordation of

		officer statements, and fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard. Article 61. The City has altered the administrative and criminal investigation standards and procedures. Article 62. The City has altered the IPR investigation standards and procedures.
Section VIII.E (Officer Accountability - Discipline)	The City has agreed to develop and implement and discipline guide.	Article 3. The City will develop and implement a discipline guide without first coming to agreement with the PPA over mandatorily negotiable subjects, including discipline, disciplinary procedures, and job security. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard.

Section VIII.F (Officer Accountability - Communication with Complainant and Transparency)	The City has agreed to disseminate information regarding complaints of officer misconduct.	Article 3. The City will disseminate information regarding complaints of officer misconduct without first coming to agreement with the PPA over mandatorily negotiable subjects, including fundamental fairness. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided [the PPA with an opportunity to comment on the drafts.]
Section IX (Community Engagement and Creation of Community Oversight Advisory Board)	The City has agreed to create a Community Oversight Advisory Board that will independently assess the implementation of the City-USDOJ agreement and make recommendations to the City and USDOJ regarding additional actions.	Articles 3, 9, 15, 20, 21, 59, 61, 62 and others; and the implied duty of good faith and fair dealing. The City has given a Community Oversight Advisory Board (COAB) authority to oversee and recommend changes to policing issues, such as through a CEO Plan, that implicates specific provisions of the CBA and/or mandatorily negotiable bargaining subjects, which the City will implement without first reaching agreement with the PPA. Further, the City, by and through the PPB Chief of Police, has agreed to implement the CEO Plan without first reaching agreement with the PPA over changes to specific provisions of the CBA and/or mandatorily negotiable bargaining subjects.

Section X (Agreement Implementation and Enforcement) & Section X.D (Agreement Implementation and Enforcement - Review of Policies and Investigations) & Section X.F (Agreement Implementation and Enforcement - Enforcement)	The City has agreed to immediately implement some aspects of the City-USDOJ agreement and to implement other aspects of the City-USDOJ agreement within 180-days of execution of the City-USDOJ agreement. The City has also agreed to submit policy changes to the DOJ for review and approval, to implement new or revised polices, to "hold officers accountable, and to modify the City-USDOJ agreement.	Articles 3, 9, 15, 20, 21, 59, 61, 62 and others; and the implied duty of good faith and fair dealing. The City has acted in bad faith; will immediately implement some aspects of the City-USDOJ agreement and will implement other aspects of the City-USDOJ agreement within 180-days of execution of the City-USDOJ agreement, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will submit policy changes to the DOJ and COCL for review and approval, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will implement new and/or revised policies specific to force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will "hold officers accountable" for not complying with PPB policy and procedure, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will modify the City-USDOJ agreement as it desires, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will "substantially comply" with the City-USDOJ agreement by October 12, 2017, in violation of existing CBA provisions and without first reaching agreement with the PPA over mandatorily negotiable bargaining subjects; will change provisions of the CBA without the PPA's agreement; and will require all employees to comply with the City-USDOJ agreement even though it violates the PPA-City collective bargaining agreement. Article 9.1. The City is restraining and coercing PPA members by requiring them to comply with the City-USDOJ agreement even though it violates the PPA-City

		collective bargaining agreement. Article 15. The City has not provided the PPA with all drafts of the to-be-amended policies and procedures and has not provided the PPA with an opportunity to comment on the drafts. Articles 20 and 21. The City has altered the just cause standard. Article 61 and 62. The City has altered the administrative and criminal investigation and IPR investigation standards and procedures.
Section X.A (Agreement Implementation and Enforcement - Compliance Officer/Community Liaison) & Section X.C (Agreement Implementation and Enforcement - Access to People and Documents)	The City has agreed to create a Compliance Officer and Community Liaison that will independently assess the implementation of the City-USDOJ agreement and make recommendations to the City and USDOJ regarding additional actions.	Articles 3, 9, 15, 20, 21, 59, 61, 62 and others; and the implied duty of good faith and fair dealing. The City has given a Compliance Officer and Community Liaison (COCL) authority to oversee and recommend changes to policing issues that implicate specific provisions of the CBA and/or mandatorily negotiable bargaining subjects, which the City will implement without first reaching agreement with the PPA. The decisions and impacts that are mandatory for bargaining include, without limitation, wages, monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, discipline, disciplinary procedures, job security, fundamental fairness, the right to legal and union representation, and recordation of officer statements.

(Karia Decl. at Ex. B, pp. 4-15).

To remedy these contract breaches, the PPA requests in its grievance that the City:

1. Cease and desist from implementing any changes to the above-referenced contract articles, existing conditions, and past practices without first reaching agreement with the PPA;

2. Restore any contract articles, existing conditions, and past practices that the City has changed;

3. Cease and desist from implementing any policies, practices, or procedures without first coming to agreement with the PPA over mandatorily negotiable subjects;

4. Restore any policies, practices, or procedures that the City has changed;

5. Cease and desist from implementing new units or expanding any existing units without first coming to agreement with the PPA over mandatorily negotiable subjects;

6. Rescind any discipline or any other employment action, such as reassignments or transfers, and make any affected PPA members whole in all ways, plus interest;

7. Make all affected PPA members whole in all ways, plus interest;

8. Discharge its duties under the PPA-City collective bargaining agreement in good faith and with fair dealing;

9. Pay to the PPA its reasonable attorney fees; and

10. Comply with such further awarded relief as may be appropriate under the circumstances.

(Karia Decl. at Ex. B, p. 16).

Simply put, the PPA's grievance against the City alleges that the Settlement Agreement before this court impairs and interferes with the PPA's rights under its collective bargaining agreement with the City. If its grievance is granted by an arbitrator, the PPA will secure a remedy that conflicts with the Settlement Agreement.

A simple example illustrates the point. At Section VIII.E of the Settlement Agreement, the City and the United States have already agreed that:

> Within 60 days of the Effective Date, PPB [the Portland Police Bureau] and the City shall develop and implement a discipline guide to ensure that discipline for sustained allegations of misconduct is based on the nature of the allegation and defined, consistent, mitigating and aggravating factors and to provide discipline that is reasonably predictable and consistent.

(Settlement Agreement at p. 49, Docket No. 4). For the PPA, the City's agreement to implement a discipline guide violates, among other things, Article 3 of the collective bargaining agreement, which requires the City to maintain "[s]tandards of employment related to wages, hours and working conditions which are mandatory for collective bargaining except those standards modified through collective bargaining" with the PPA. (Karia Decl. at Ex. A, p. 8). Discipline and job security—both of which are affected by a discipline guide—are mandatory for bargaining. *See Springfield Police Ass'n v. City of Springfield*, 16 PECBR 712, 721 (1996), *aff'd without opinion*, 147 Or App 729 (1997); *Portland Fire Fighters Ass'n, Local 43 v. City of Portland*, 16 PECBR 245, 250-52 (1995) (employer's unilateral change in level of discipline it would impose on certain employees was held unlawful). Because the City has not come to agreement with the PPA regarding a discipline guide, the City cannot implement a discipline guide as required by the Settlement Agreement without violating the collective bargaining agreement.

Further, intervention is warranted even if the conflict between the collective bargaining agreement and the Settlement Agreement is merely hypothetical. The mere threat of injury to the contractual rights of a union, embodied in a collective bargaining agreement, is sufficient to bar portions of a Settlement Agreement. *See United States v. City of Hialeah*, 140 F.3d 968, 982 (11th Cir. 1998) ("objectors [are] not required to prove with certainty that particular employees would lose contractual benefits"); *City of Los Angeles*, 288 F.3d at 400 ("To the extent that [the

consent decree] contains or *might* contain provisions that contradict terms of the officers' [collective bargaining agreement], the Police League has an interest.") (Emphasis added).

The changes in mandatory bargaining subjects summarized above not only violate the PPA-City collective bargaining agreement, they also trigger an obligation on the City to bargain with the PPA under Oregon's collective bargaining law. The Oregon Employment Relations Board ("ERB") has exclusive jurisdiction over collective bargaining disputes involving public employee labor organizations, such as the PPA, that are not otherwise subject to the grievance procedure under a collective bargaining agreement. *See Ahern v. Ore. Public Employees Union*, 329 Or. 428, 434-35 (1999); *Portland Police Ass'n v. City of Portland*, ERB Case No. UP-05-08, 23 PECBR 856, 866 (2010), *aff'd*, 248 Or. App. 109 (2011) ("The policies of the PECBA strongly favor resolving labor disputes through arbitration.").

Under the PECBA, the City must bargain in good faith and reach agreement with the PPA before it can implement changes to mandatory bargaining subjects. If the City implements the changes described in the Settlement Agreement without first fulfilling its bargaining obligations with the PPA, the City will commit an unfair labor practice under ORS 243.672(1)(e), which may result in additional litigation between the PPA and the City before the ERB. *See, e.g., Amalgamated Transit Union, Division 757 v. Tri-Met of Oregon*, ERB Case No. UP-062-05, 22 PECBR 911, 951–953 (2009), *aff'd*, 250 Or. App. 681 (2012) (employer violates ORS 243.673(1)(e) by implementing changes that impact mandatory bargaining subjects without first bargaining with labor union).

Even if the subject matter of a change proposed by the Settlement Agreement is permissive for bargaining (for example, establishing the new Crisis Intervention Unit), the City is still obligated to bargain over changes that impact mandatory subjects of bargaining (for

example, establishing the monetary benefits, hours, working conditions, workload, safety, safety-related training, safety-related staffing, and discipline standards for police officers assigned to the new Crisis Intervention Unit). *See Beaverton Police Ass'n v. City of Beaverton*, ERB Case No. UP-10-01, 19 PECBR 925 (2002), *aff'd*, 194 Or. App. 531 (2004) (explaining the decision/impact bargaining analysis).

If the parties were unable to reach agreement through good faith negotiations, the PPA and the City would be required to submit their collective bargaining dispute to an interest arbitrator, who has the exclusive authority to resolve collective bargaining disputes when the parties are themselves unable to reach agreement through good faith negotiations under the PECBA. *See* ORS 243.712, 243.736, 243.742, and 243.746.

Using the discipline guide example from above, the City would need to bargain in good faith with the PPA before it could implement a discipline guide that concerns job security and discipline, both of which are mandatory for bargaining. If the City and PPA were unable to reach agreement, they would need to submit the dispute to an interest arbitrator, who would have exclusive, state-law authority to resolve the bargaining impasse.

The complexities surrounding Oregon's collective bargaining law revolve around a simple premise–the City has bargaining obligations with the PPA that the City must satisfy notwithstanding the provisions of the Settlement Agreement. *See Washington County Police Officers Ass'n v. Washington County*, 321 Or. 430, 439 (1995) ("The fact that two legal duties may collide, or appear in conflict, does not excuse an employer from making good faith efforts to comply with those duties, or excuse [the Oregon Employment Relations Board] from enforcing them.").

In sum, as in *City of Los Angeles*, because the Complaint seeks injunctive relief against PPA member officers and raises factual allegations that its member officers committed unconstitutional acts in the line of duty, the PPA has a protectable interest in the merits phase of this litigation. Further, because the Settlement Agreement proposes changes that infringe on the PPA's state-law bargaining rights to negotiate about the terms and conditions of its members' employment and to rely on the collective bargaining agreement that is the result of those negotiations, the PPA also has a protectable interest in the remedy sought in this action.

3. An adverse decision in this forum would impair the PPA's ability to protect its contractual rights with the City and impede enforcement of state-law bargaining rights.

Fed. R. Civ. P. 24(a) requires that an applicant for intervention as a matter of right be "so situated that disposition of the action may as a practical matter impair or impede the movant's ability to protect its interest." *City of Los Angeles*, 288 F.3d at 397. Fed. R. Civ. P. 24(a) does not require that the intervener's interests be legally impaired; the relevant inquiry is whether the intervener's interests "may" be impaired "as a practical matter." *Id.*

In *City of Los Angeles*, the Ninth Circuit found that the Police League satisfied this third prong of the intervention analysis because the Police League's continuing ability to protect and enforce its contract provisions *could* be impaired or impeded by the consent decree between the United States and the City. 288 F.3d at 401.

So too here. Denial of leave to intervene would impair the ability of the PPA to protect its contractual rights with the City. Should the court approve the Settlement Agreement, the conflict between the terms of the Settlement Agreement and the collective bargaining agreement will place opposing obligations on the City and likely result in breach of the collective bargaining agreement by the City. Without the PPA's involvement in this action, adjudicating the conflict

between the Settlement Agreement and the collective bargaining agreement will severely impair the substantial legal interests of the PPA in upholding its rights under the collective bargaining agreement on behalf of its members.

Further, the Settlement Agreement between the United States and the City would impede the rights of the PPA's members by changing their terms and conditions of employment without first satisfying the bargaining obligations imposed by the PECBA. As the Court noted in *City of Los Angeles*, a settlement agreement that overrides state law bargaining rights–even if court-approved–impedes the legal rights of bargaining unit members. *Id*. at 401.

4. The PPA's interests will not be adequately represented by the City.

The PPA satisfies the final prong for intervention because the City may not adequately represent the PPA's interests. To assess adequate representation, the court considers:

> (1) whether the interest of a present party is such that it will undoubtedly make all the intervener's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the would-be intervener would offer any necessary elements to the proceedings that other parties would neglect. The prospective intervener bears the burden of demonstrating that existing parties do not adequately represent its interests.

City of Los Angeles, 288 F.3d at 398 (citations omitted). The requirement of inadequate representation is satisfied if the applicant shows that representation of his interest by existing parties "may be" inadequate. *Id*.

Normally, "a presumption of adequate representation generally arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee." *City of Los Angeles*, 288 F.3d at 401 (internal quotations omitted). However, this presumption arises when the government is acting on behalf of a constituency that it represents; the situation is different when the government acts as an employer. The presumption does *not*

apply to parties who are antagonists in the collective bargaining process. *Id*. at 402. For this reason, the court in *City of Los Angeles* found that the Police League's interests diverged from those of the City of Los Angeles and held that the City of Los Angeles would not adequately represent the Police League's interests. *Id*. at 402.

The same result obtains here. The City will not adequately represent the PPA's interests because the City and the PPA are antagonists in the collective bargaining process. Indeed, they have a marked divergence on key elements of the Settlement Agreement and the underlying theories of liability. The mere fact that the PPA has filed a grievance regarding the City's agreement to implement widespread changes to the Portland Police Bureau's standards, policies, and procedures illustrates the parties' opposition in collective bargaining matters. Further, the Settlement Agreement itself points to the fact that collective bargaining agreements "may require changes" (Settlement Agreement at p. 72, para. 180) and highlights the City's need to negotiate with the PPA over collective bargaining issues (Settlement Agreement at p. 75, para. 189). The PPA and City stand in an adversarial position and, therefore, the City cannot adequately protect the PPA's interests.

B. Alternatively, the court should permit the PPA to intervene permissively.

Permissive intervention is governed in pertinent part by Fed. R. Civ. P. 24(b)(2)(B), which provides, "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Thus, "a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *City of Los Angeles*, 288 F.3d at 403 (internal quotations omitted).

The threshold requirements for permissive intervention are clearly met here. The court has independent grounds for asserting jurisdiction over the PPA. The Complaint alleges that the PPA's members have deprived persons of rights, privileges, and immunities secured or protected by the Constitution of the United States, in violation of 42 U.S.C. § 14141, and seeks injunctive relief against the PPA's members. The Court has federal question jurisdiction over these claims. *See* 28 U.S.C. § 1331. (Compl. at ¶ 2). This is sufficient to establish this court's independent grounds for jurisdiction. *See Freedom from Religion Foundation, Inc. v. Geithner*, 644 F.3d 836, 843-44 (9th Cir. 2011) (in federal-question cases, the jurisdictional requirement for permissive intervention is met if intervener relies on the same federal statute as the plaintiff).

As noted above, this motion is timely and allowing the PPA to intervene will not delay the litigation. Further, questions of law or fact are shared with the existing parties. The PPA seeks to defend its member officers against the allegations of police misconduct and the injunction request in the Complaint. The PPA also seeks to address the viability of the remedies in the Settlement Agreement and present evidence as to why many of those remedies are inappropriate given their conflict with the collective bargaining agreement and state-law bargaining obligations. The PPA does not seek to bring any new claims, and intervention by the PPA would neither delay the litigation nor alter the factual background around which the claims revolve.

As demonstrated above, the PPA’s interest is distinct from, and not adequately represented by, the City. The PPA brings an important and distinct perspective to this case; a perspective that will assist the Court's resolution of this matter and further judicial economy by avoiding future litigation. The PPA will represent interests in this litigation that may not otherwise be represented, and its participation will contribute to the equitable resolution of this

conflict. *See Venegas v. Skaggs*, 867 F.2d 527, 530-31 (9th Cir. 1989), *aff'd sub nom., Venegas v. Mitchell*, 495 U.S. 82 (1990) (permissive intervention should be granted where it will not unduly delay or prejudice the adjudication of an existing party's rights, where the movant's interest is not adequately represented by an existing party, and where judicial economy will benefit from the intervention). Accordingly, the PPA should be granted permissive intervention.

C. The PPA has submitted a proposed answer to the United States' Complaint.

As required by Fed. R. Civ. P. 24(c), the PPA has submitted with its motion a proposed answer to the United States' Complaint that "sets out the claim or defense for which intervention is sought." (Karia Decl. at ¶ 9 and Ex. C).

IV. CONCLUSION.

For the reasons described above, the PPA respectfully requests that the court grant its motion to intervene as a defendant as a matter of right under Fed. R. Civ. P. 24(a) or, in the alternative, permissively under Fed. R. Civ. P 24(b).

DATED this 18th day of December, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MEMORANDUM IN SUPPORT OF INTERVENER-DEFENDANT PORTLAND POLICE ASSOCIATION'S FRCP 24 MOTION TO INTERVENE on:

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DATED this 18th day of December, 2012.

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EXHIBIT R

D146FLOC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DAVID FLOYD, et al.,

Plaintiffs,

v. 08 CV 1034(SAS)

CITY OF NEW YORK, et al.,

Defendants.

----------x

New York, N.Y.
January 4, 2013
2:30 p.m.

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

APPEARANCES

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JONATHAN MOORE
COVINGTON & BURLING, LLP
Attorneys for Plaintiffs
BY: KASEY MARTINI

CENTER FOR CONSTITUTIONAL RIGHTS
Attorneys for Plaintiffs
BY: DARIUS CHARNEY

cannot turn myself into someone being born yesterday. I have been here for a long time in this city and on this bench. I know where the high-crime areas are instinctively, don't you? This is a nonissue.

Now a big issue. Bifurcation of trial into liability and remedial phases.

What is your position on this?

MS. GROSSMAN: Your Honor, this is a first time --

THE COURT: What is your position?

MS. GROSSMAN: I don't understand what they mean and what they want. I don't understand what it means to bifurcate.

THE COURT: Do you have a position?

MS. GROSSMAN: I don't think we should.

THE COURT: Good. Either do I. I want to make sure if you agreed with them, I would kind of be in a difficult position. I don't need to bifurcate. I want to get this trial tried. One trial.

MR. CHARNEY: I know your Honor also doesn't want to have a third stop-and-frisk class action.

THE COURT: I have three now.

MR. CHARNEY: There was Daniels and then Floyd. And I think the concern here is that the remedies that we're seeking in this case are very complex, very affirmative and there needs to be a lot of thought put into it. That was not the case in Daniels. Both sides were at fault for that. Five years later

we were in front of you again. This time we want to get it right.

THE COURT: Good. Get it right, but it is all the same trial.

MR. CHARNEY: But to have us put in all that evidence, we're burdening you --

THE COURT: No, you are not. Let's get one record, one decision and one appeal from one side or the other.

MR. CHARNEY: We may need to add exhibits and witnesses.

THE COURT: Okay. Because you anticipate that I was going to ruling in your favor?

MR. CHARNEY: No. No.

THE COURT: Get it done.

Now Mr. Pena.

MS. BORCHETTA: The last one.

THE COURT: The last one says, "The plaintiffs want to preclude defense counsel from communicating with witnesses once the witness has been sworn." I believe the law is not until the witness is on cross. Once the person is on cross, they cannot do that and you can't either. Once your witness is on cross, you cannot talk to them.

MS. GROSSMAN: I think we're all professionals here.

THE COURT: Didn't I just state so.

Let's go to Mr. Pena. There are a lot letters, pages,