

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

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

Defendants.

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**DEFENDANTS’  
LOCAL CIVIL RULE  
56.1 STATEMENT OF  
UNDISPUTED FACTS**

**08 CIV. 01034 (SAS)**

Pursuant to Rule 56.1 of the Local Rules of this Court, defendants submit that the  
following facts are undisputed:

1. Plaintiff filed this civil action on January 31, 2008, alleging, *inter alia*, claims for unlawful stop and municipal liability for the custom and practice of unlawfully stopping individuals throughout New York City without reasonable suspicion and on the basis of race.

The Daniels Settlement and The Quality Assurance Division

2. On or about September 24, 2003, the parties in Daniels v. City of New York, 99 CV 1695 (SAS), entered into a Stipulation of Settlement dated September 24, 2003 (“Settlement”).

3. The Settlement followed approximately four years of discovery and vigorous and good- faith negotiations by Defense and Class counsel over a period of several months. Daniels Settlement at p. 2. The City of New York admitted no liability. The Court did not adjudicate the merits of the action. Settlement, ¶A.3. The Settlement terminated on December 31, 2007. Settlement, ¶ K.5.

4. Class Counsel in Daniels included Jonathan Moore, Esq. and the Center for Constitutional Rights. Settlement, ¶Q.

5. Jonathan Moore, Esq. and the Center for Constitutional Rights are among the counsel of record for plaintiffs in the instant action, Floyd v. City of New York, 08 CV 01034 (SAS).

6. One of the Settlement terms provided that New York City Police Department (the “NYPD “ or the “Department”) continue its requirement that all NYPD officers document stop, question and frisk activity in UF250 Reports and that the UF250 Report shall conform in all significant respects to the specific form attached to the Settlement as Attachment B. Settlement, ¶F1 and Attachment B (“UF250 form”).

7. The UF250 Report (revised 11-02) is the Stop, Question and Frisk Report Worksheet (“UF250 form”). Grossman Dec. Exh “A “ at NYC-00005407-08; 8/7/09 Deposition of Chief Joseph Esposito, Aug. 7, 2009 (“8/7/09 Esposito Tr.”) at 61:5-23.

8. The UF250 form is two-sided and captures data on the details of a stop. On the front of the form are checkboxes, which capture circumstances surrounding the reason for a stop. 8/7/09 Esposito Tr. at 132:18 – 133:3; 133:4-15; 142:25-143:9; Cronin Dep. Tr. at 51:22-53:11; Montgomery Dep. Tr. at 57:20-59:17; Grossman Dec. Exh “A “ at NYC-00005407-08.

9. The checkboxes under the category of “What Were Circumstances Which Led to Stop?” encompass the following options: “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” and “Wearing Clothes/Disguises Commonly Used In Commission of Crime”. Attachment B to Settlement (UF250 form); Grossman Dec. Exh “A” at NYC-00005407-08.

10. The form provides an efficient way to enter information in a database. 8/7/09 Esposito at 133:1-134:12.

11. The UF250 form is designed, in part, to help the NYPD determine whether the stop identified on a UF250 was in fact based on reasonable suspicion. 8/7/09 Esposito Tr. at 217:16-21; 65:16-24.

12. Another Settlement term required the NYPD to compile a database consisting of all UF250 reports prepared and provide them to Class counsel on a quarterly basis. Settlement, ¶F5.

13. The Settlement also required that inquiry about stop, question and frisk activity continue to be integrated into the NYPD's Compstat review process. Settlement, ¶D5.

14. The Settlement provided that the NYPD maintain the Police Academy curriculum pertaining to the Racial Profiling Policy, and continue to train police officers about the legal and factual bases for conducting and documenting stop, question and frisk activity, the law of search and seizure and cultural diversity, integrity and ethics. Settlement, ¶E1, ¶E2, ¶E3, ¶E4 and ¶E5.

15. The Settlement further provided that the NYPD continue to audit training records regarding stop, question and frisk practices, continue to document monthly activity reports, present 40-50 workshops to select high schools about stop, question and frisk encounters, revise and make available an "Understanding Your Rights" pamphlet regarding stop, question and frisk encounters and design and create a palm card providing contact information and procedures for citizens who have concerns arising from a stop, question and frisk encounter. Settlement, ¶D2, ¶F2, ¶G3, ¶G4, ¶G5.

16. The Settlement required the NYPD to maintain a written policy against Racial Profiling. Settlement, ¶C 1.

17. The Department Policy Regarding Racial Profiling (Operations Order Number 11 dated 03-13-02)("Racial Profiling Policy") was implemented prior to the settlement and attached to the Settlement as Exhibit A; Grossman Dec. Exh "B " NYC-00008222.

18. The Racial Profiling Policy prohibits the use of race, color, ethnicity or national origin as a determinative factor in taking law enforcement action. Grossman Dec. Exh “B”, Racial Profiling Policy.

19. Members of service may use race, color, ethnicity or national origins to identify a suspect in the same way as “pedigree information” such as height, weight and age. Grossman Dec. Exh “B”, Racial Profiling Policy; Deposition of Joseph Esposito, Nov. 23, 2009 (“11/23/09 Esposito Tr.”) at 284:21-285:4.

20. Paragraph 4 of the Racial Profiling Policy required commands to establish self-inspections to ensure compliance with the Racial Profiling Policy. Grossman Dec. Exh “B”, Racial Profiling Policy.

21. Paragraph 4 of the Racial Profiling Policy also required the NYPD Quality Assurance Division (“QAD”), a unit within NYPD responsible for monitoring compliance with Department procedures, to audit compliance with the self-inspection. Settlement at ¶4; Deposition of Commissioner Michael Farrell, Aug. 19, 2009, (“Farrell Tr.”) at 62:25-65:13, 72:18-73:22; Deposition of Mary Cronin, Mar. 22, 2010, (“Cronin Tr.”) at 28:24-30:5.

22. The Settlement also defined the scope of NYPD monitoring by QAD regarding the Racial Profiling Policy. Settlement, ¶C5.

23. The Racial Profiling monitoring that the Settlement required was a QAD audit of the stop question and frisk practices which provides:

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 (e.g., 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.

Settlement, ¶D1.

24. Municipal Defendants in Daniels provided Class Counsel with a copy of the agreed upon audit protocols referenced in the Settlement. Settlement, ¶D1; Grossman Dec. Exh “C”, Audit Protocols Bates No. NYC 037890-96 and Exh “P”, Letter dated 9/20/07 at 2, ¶4 from Assistant Corporation Counsel Heidi Grossman to the Center for Constitutional Rights re: Daniels v. City of New York (“Daniels 9/20/07 Letter”)(“[P]laintiffs must acknowledge that the precise audits we agreed to perform and which have been fully integrated into the audit cycle were shown to Class Counsel and incorporated into the Agreement...The purpose of negotiating and incorporating the precise audit protocol into the Agreement was precisely to prevent any future disputes over the scope or nature of the audit”).

25. The self-inspection protocol and QAD inspections referenced in Paragraph 4 of the Racial Profiling Policy are the same self-inspection protocols and QAD inspections (created by QAD) referenced in the Audit Protocols at Bates No. NYC 037890-96 and also referenced in the Settlement. Settlement, ¶C5; Grossman Dec. Exh “B” at ¶ 4, Racial Profiling Policy; Grossman Dec. Exh “C”, Audit Protocols Bates No. NYC 037890-96.

26. QAD conducts yearly, random, Department-wide audits to evaluate compliance with the Racial Profiling Policy by auditing the Department’s Stop, Question and Frisk Practices. Grossman Dec. Exh “C”, Audit Protocol Bates No. NYC 037890-96; 8/7/09

Esposito Tr. at 52:4- 14; Cronin Tr. at 34:5-10; QAD audit results were provided to Daniels Class Counsel prior to the Settlement termination date of December 31, 2007. Grossman Dec. Exh "P".

27. Given the time consuming and comprehensive nature of Department-wide audits, which are conducted yearly and take three months to complete, only select topics are subject to them. Farrell Tr. at 63:12-65:13; Cronin Tr. at 169:11-170:5.

28. The Audit Protocol referenced in the Settlement sets forth a multi-step audit procedure. Grossman Dec. Exh "C", Audit Protocol Bates No. NYC037890-NYC037896.

29. The Audit Protocol indicates that the audits are intended to test whether stop, question and frisk activity is based on reasonable suspicion as reflected in the UF250 forms. Cassidy Tr. 68:8-25; Grossman Dec. Exh "C", Audit Protocol Bates No. NYC037890-NYC037896; Grossman Dec. Exh "P", Daniels 9/20/07 Letter.

30. The first part of the audit involves a Department-wide examination by QAD of information reported by police commands on the UF250 forms. Grossman Dec. Exh "C", Audit Protocol Bates No. NYC037890-NYC037896.

31. In order to evaluate the quality of the UF250 forms and compliance with the Racial Profiling Policy and Patrol Guide Procedure 212-11 ("Stop and Frisk") "Worksheet #802" was prepared to guide the QAD evaluator and the precinct integrity control officers ("ICO") or their designees. Grossman Dec. Exh "C", Audit Protocol Bates NYC 037890-96.

32. A QAD evaluator inspects the last 25 UF250 forms from each command and evaluates the quality of the UF250 form and compliance with PG 212-11 Stop and Frisk as guided by "Worksheet #802". Grossman Dec. Exh "C", Audit Protocol Bates NYC 037890-96;

Farrell Tr. at 76:24-78:11, 101:18-25; Worksheet #802, Bates NYC\_2\_00009825-NYC-2\_00009828.

33. Also guided by Worksheet 802, QAD inspects 5 UF250 forms and examines the reporting officer's Activity Log, also known as Memobook, to see if corresponding entries, detailing the circumstances of the stop were made relating to the stop, question and frisk report prepared. Grossman Dec. Exh "C", Audit Protocol Bates No. NYC037892-93; Cronin Tr. 69:16-70:6, 185:15 – 186:6, 08/19/2009 Farrell Tr. 126:23 – 129:3, 81:21-82:8.

34. Patrol Guide 212-08 provides for uniformed members of service to record entries in their Activity Log/Memobook relating to their activity, including information "pertinent to an assignment or observed/suspected violation of law." PG 212-08, "Activity Logs," January 1, 2000, NYC\_2\_00011834, and PG 212-08 June 12, 2009 NYC\_2\_00009532.

35. Another aspect of the audit is the monthly individual command inspections administered by a precinct's ICO or designee as guided by Worksheet 802 ("802 Self-Inspection"). Grossman Decl., Ex. C at NYC 37890-37894. A self-inspection is when a command evaluates itself. Farrell Tr. at 73:17-22.

36. The 802 self-inspection requires the ICO or designee to examine, among other things, the last 25 UF250 forms to assess whether all applicable captions on the form have been completed, with added emphasis placed on a supervisor's review and those captions documenting the crime suspected, i.e. Felony or Misdemeanor type and the circumstances which lead to the stop. Grossman Dec Exh "C", Audit Protocol Bates No. NYC 037891 at ¶ 2c; 03/22/2010 Cronin Tr. 39: 5-24, 48:23-50:13; Representative samplings of 802 self-inspections are found at the following Bates Nos produced to plaintiffs: NYC\_2\_00007835-43; NYC\_2\_00007888-910; NYC\_2\_00008275-77; NYC\_2\_00008298-319; NYC\_2\_00008454-62;



NYC\_2\_00008502-11; NYC\_2\_00008548-56; NYC\_2\_0009825-68; NYC\_2\_00010046-97;  
NYC\_2\_00010295-359; NYC\_2\_00010812-46; NYC\_2\_00010998-1018; NYC\_2\_00011019-  
87; NYC\_2\_00011175-80; NYC\_2\_00011366-72; NYC\_2\_00011796-804; NYC\_2\_00011877-  
2338; NYC\_2\_00013129-329; NYC\_2\_00013632-94; NYC\_2\_00014019-21;  
NYC\_2\_00014505-16; NYC\_2\_00014536-43; NYC\_2\_00016713-7020; NYC\_2\_00017670-  
8152..

37. There is a second self-inspection known as “802A Police Initiated Enforcement”. Worksheet #802A was created to guide the command in evaluating Arrest Reports resulting from certain police observations, such as arrests for Criminal Possession of a Controlled Substance, Criminal Possession of a Weapon and those arrests where the People of the State of New York is a complainant. Cronin Tr. at 55:9-57:9; Grossman Dec. Exh “C”, Audit Protocol Bates NYC 037890-96. Representative samplings of 802A self-inspections are found at the following Bates Nos produced to plaintiffs: NYC\_2\_00007797-834; NYC\_2\_00007846-87; NYC\_2\_00007911-49; NYC\_2\_00008204-97; NYC\_2\_00008320-41; NYC\_2\_00008463-544; NYC\_2\_00008557-602; NYC\_2\_00009869-10045; NYC\_2\_00010098-281; NYC\_2\_10360-630; NYC\_2\_00010847-997; NYC\_2\_00011088-406; NYC\_2\_00012339-693; NYC\_2\_00013330-631; NYC\_2\_0001369-4038; NYC\_2\_00014517-29; NYC\_2\_00014544-55; NYC\_2\_00016522-46; NYC\_2\_00017021-669; NYC\_2\_00018153-449.

38. Worksheet 802A is also designed to determine whether officers are complying with the Department’s Racial Profiling Policy. Cronin Tr. at 139:11-21; 148:15-149:14.

39. ICOs or designees are required to examine their commands’ last five arrests in a month for offenses of the type referenced above and then note on Worksheet #802A any failure

to prepare a UF250 form when required. Grossman Dec. Exh "C", Audit Protocol Bates NYC 037890-96; Cronin 130:20-131:19.

40. The 802A self-inspection helps test an officer's ability to identify reasonable suspicion to initiate a stop. Cronin Tr. at 139:11-21; 148:15-149:14.

41. QAD also audits whether ICO's are conducting self-inspections. 03/22/2010 Cronin Tr. 36:9-25, 37:19-38:12. QAD also conducts quarterly "Maintenance of Records Audits", as guided by Worksheet 800, to see that commands have self-inspected in the 13 self-inspection areas mandated by the Department, including but not limited to 802(UF250 Forms), 802a(Police Initiated Enforcement) and 803(Memobook/Activity Logs). Maintenance of Records Audit Bates NYC\_2\_00006610, NYC\_2\_00006679, NYC\_2\_00006680.

42. Self-inspections take time to integrate and implement Department-wide. Farrell Tr. at 631-65:13; Cronin Tr. at 31:5-32:14.

43. On December 26, 2002, a FINEST Message was transmitted to police commands communicating the self-inspection requirements referenced in the Racial Profiling Policy. 12/26/02 FINEST Message NYC\_2\_00008341.

44. The NYPD conducted seven Stop, Question and Frisk 802 Audits covering activity between 2003 and 2009. Grossman Dec. Exh "E", Complete copy of the Stop Question and Frisk Summary (Citywide) 2008 3rd Quarter reviewed, Bates No NYC00004305-4318 and the first pages of the Stop Question and Frisk Summaries (Citywide) between 2003 and 2009 ("Audit Summaries"); Full copies of the following audits are entitled and designated with Bates Numbers as follows: Stop Question and Frisk Summary (Citywide) 2003 1<sup>st</sup> Quarter reviewed, Bates No NYC\_2\_000006001-0014; Stop Question and Frisk Summary (Citywide) 2004 1<sup>st</sup> Quarter reviewed, Bates No NYC060015-028; Stop Question and Frisk Summary (Citywide)

2005 4th Quarter reviewed, Bates No NYC060029-042; Stop Question and Frisk Summary (Citywide) 2006 4th Quarter reviewed, Bates No NYC\_2\_00000767-791; Stop Question and Frisk Summary (Citywide) 2007 3rd Quarter reviewed, Bates No NYC-00004287-4300; Stop Question and Frisk Summary (Citywide) 2008 3rd Quarter reviewed, Bates No NYC00004305-4318; Stop Question and Frisk Summary (Citywide) 2009 3rd Quarter reviewed, Bates No NYC\_2\_00018524-18538.

45. The commands/units subject to these audits are as follows: 8 Patrol Bureaus comprised of a total of 76 Precincts; Transit Bureau comprised of 12 Transit Districts and 4 Task Forces for a total of 16 commands/units; Housing Bureau comprised of 9 Police Service Areas plus the SI Housing unit in Staten Island for a total of 10 commands/units; OCCB comprised of 18 commands/units; Borough Crime comprised of 8 commands/units; and Task Force comprised of 8 commands/units. A total of 136 commands/units are audited. Id.

46. The results of the seven QAD audits through 2009 show satisfactory or above ratings. Id.

47. The 8 Patrol Bureaus received overall satisfactory or above ratings for all audits, with the exception of the first audit where half received satisfactory or above ratings and 2006 where 7 of 8 received satisfactory or above ratings. Id.

48. The first audit covering the 1st quarter of 2003 showed that of the 136 commands/units, 88 received ratings of satisfactory or above. The second audit covering the 1<sup>st</sup> quarter of 2004 showed that 125 commands/units received satisfactory or above ratings. The third audit covering the 4<sup>th</sup> quarter of 2005 showed that 120 commands/units received satisfactory or above ratings. The fourth audit covering the 4<sup>th</sup> quarter of 2006 showed that 116 commands/units received satisfactory or above ratings. The fifth audit covering the 3<sup>rd</sup> quarter of

2007 showed that 124 commands/units received satisfactory or above ratings. The sixth audit covering the 3<sup>rd</sup> quarter of 2008 showed that 133 commands/units received satisfactory or above ratings. The seventh audit covering the 3<sup>rd</sup> quarter of 2009 showed that 136 commands/units received a satisfactory or above rating. The last two audits show that in 2008 and 2009, only 7 units and 8 units respectively, received less than satisfactory ratings for a pass rate of 95% and 94% respectively. Id. Grossman Dec. Exh “F”, Rating Parameters Stop Question and Frisk Worksheet #802 Bates No. NYC\_2\_00007317.

49. While QAD audits have shown that all commands and units have achieved satisfactory or better ratings with respect to the preparation of UF-250s, certain commands and units did not receive satisfactory or above ratings with respect to officers making entries in activity logs/memobooks required by Stop and Frisk Patrol Guide 212-11; Memo dated January 11, 2009 Bates No NYC\_2\_00006387

50. QAD forwarded commands with noted deficiencies in the preparation of activity logs/memobooks the results of their respective QAD evaluations and directed them to take corrective action (“notifications”). Grossman Dec. Exh “H”, Memo dated January 28, 2009 re: Corrections Made Regarding Deficiencies Noted During QAD Evaluation with attachments Bates No NYC\_2\_00006389-6406; Samplings of similar memos between 2008 and 2009 regarding notification of deficiencies and corrective action taken are at Bates No NYC\_2\_00006389-6492.

51. After completion of the 3<sup>rd</sup> Quarter 2009 audit, QAD forwarded the above notifications, notwithstanding the satisfactory ratings in all other categories. Bates No NYC\_2\_00018560-18620; 18719-18922.

52. The Deputy Commissioner for Strategic Initiatives (QAD Commanding Officer) sent notifications through the NYPD chain of command, including Chief of Department, Chief of Patrol, Commander of the Patrol Borough and the Precinct Commanding Officer. Grossman Dec. Exh "H", Memo dated January 28, 2009 re: Corrections Made Regarding Deficiencies Noted During QAD Evaluation Bates No NYC\_2\_00006389-6406; Samplings of similar memos between 2008 and 2010 regarding notification of deficiencies and corrective action taken are at Bates No NYC\_2\_00006389-6492; NYC\_2\_00018560-18620; NYC\_2\_00018719-18922.

53. Upon receipt of these notifications, Commands were expected to and did implement corrective measures to address noted deficiencies. These memos are sent whenever deficiencies are noted. Grossman Dec. Exh "H", Memo dated January 28, 2009 (with attachments) re: Corrections Made Regarding Deficiencies Noted During QAD Evaluation Bates No NYC\_2\_00006389-6406; Sampling of similar memos between 2008 and 20010 regarding notification of deficiencies and corrective action taken Bates No NYC\_2\_00006389-6492; NYC\_2\_00018560-18620; NYC\_2\_00018719-18922.

54. Corrective action has, for example, included conferral between the Training Supervisor and appropriate supervisors to review all UF250s and Activity Logs/Memobooks while out in the field, instruction to individual officers with deficient Activity Logs/Memobook entries, random ICO inspections, additional training by the Training Supervisor to members of service, notation of deficiencies in the Minor Violation Log and command discipline for further deficiencies. Grossman Dec. Exh "H", Memo dated January 28, 2009 (with attachments) Bates No NYC\_2\_00006392.; NYC\_2\_00018560-18620; NYC\_2\_00018719-18922.

55. On or about March 7, 2008, all commands were notified by FINEST message that QAD instituted a new self-inspection protocol to bring about compliance with PG 212-08 Activity Logs. QAD also created a new self-inspection Worksheet 803 Activity Logs to guide and to be completed by each command on a quarterly basis. The FINEST message also reminded officers to prepare activity logs in accordance with Patrol Guide Procedure 212-08 "Activity Logs". FINEST Message dated 3/7/08 Bates No. NYC\_2\_00011820; Worksheet #803 Activity Logs Bates No. NYC\_2\_00011826.

56. The self-inspection requires the command to examine whether the Activity Log/Memobook has an entry detailing the circumstances of the stop. Worksheet #803 Activity Logs Bates No. NYC\_2\_00011826. A sampling of 803 self-inspections is found at the following Bates Nos: NYC\_2\_00009671-812; NYC\_2\_00011805-19; NYC\_2\_00014529-34; NYC\_2\_00016547-51.

57. QAD, through its Maintenance of Records Audit, then checks that the commands are conducting self-inspections. FINEST Message dated 3/7/08 Bates No. NYC\_2\_00011820.

58. An Activity Log/memobook entry which includes the fact of a stop or certain details, but which does not note the details of the circumstances of a stop, question and frisk may receive an unsatisfactory rating. Cronin Tr. 50:1-22, 74:2-16, 101:2-102:10. The rating criteria reflects a very low tolerance for the absence of complete entries. Farrell Tr. 126:23-127:25.

59. In 2006, a Training Memo was issued to facilitate command training on preparation of Activity Logs/Memobooks. Deposition of Dan Mulligan Nov. 24, 2009 ("Mulligan Tr.") at 73:14-77:2; Memobook Training Memo Bates NYC\_2\_00005040-NYC\_2\_00005146.

Rand

60. In 2007, the Rand Center on Quality Policing (“Rand”) was retained by the New York Police Foundation to conduct a study of the NYPD’s stop question and frisk practices. *Analysis of Racial Disparities in the New York Police Department’s Stop, Question and Frisk Practices*, November 20, 2007 (“Rand Report”) [http://www.rand.org/pubs/technical\\_reports/2007\\_TR534.pdf](http://www.rand.org/pubs/technical_reports/2007_TR534.pdf); Farrell Tr. at Exh 14; Grossman Dec. Exh “I”, Summary excerpt of Rand Report (“Rand Summary”) at pp. xi-xvii.

61. The NYPD asked Rand to help it understand these issues. Rand Report; Farrell Tr. at Exh 14; Grossman Dec. at Exh “I”, Rand Summary at xi.

62. Rand is a nonprofit institution whose mission over the past 30 years has been to help improve policy and decision-making through research and analysis. Rand Objective Analysis, Effective Solutions, *available at* <http://www.rand.org/about/>.

63. Rand focuses on various issues, including public safety and policing. Rand Objective Analysis, Effective Solutions, *available at* <http://www.rand.org/about/>.

64. As a nonpartisan organization, RAND is highly regarded as an organization, which operates independent of political and commercial pressures and has a reputation for objectivity and quality. Rand has helped police departments around the United State improve policies in many areas and conducted studies of police departments throughout the Country. Rand Objective Analysis, Effective Solutions, *available at* <http://www.rand.org/about/>.

65. Rand researchers analyzed data on street encounters between NYPD officers and pedestrians in 2006, which were recorded on UF250 forms and entered into the UF250 database. Rand Report at 1; Farrell Tr. at Exh “14”; Grossman Dec. Exh “I”, Rand Summary at xi-xvii.

66. They compared the racial distribution of stops to external benchmarks and attempted to construct what the racial distribution of the stopped pedestrians would have been if officers' stop decisions had been racially unbiased. *Id.* at xi, xii.

67. Then they compared officers' stopping patterns with an internal benchmark constructed from stops in similar circumstances made by other officers. *Id.* at xi, xii, xiii. In their internal benchmarking analysis, the RAND researchers examined the stopping patterns of those officers who conducted 50 or more stops in 2006, a group which represented about 2756 officers. Those 2756 officers accounted for 54 percent of the total number of 2006 stops-and-frisks. *See* RAND Report at xiii, 25-26.

68. Finally, they examined stop outcomes, assessing whether stopped white and nonwhite suspects have different rates of frisk, search, use of force, and arrest. *Id.* at xii.

69. Rand made communication, recordkeeping and training recommendations to the NYPD for improving police-pedestrian interactions and found, in pertinent part, as follows:

The raw statistics cited...distort the magnitude and, at times, the existence of racially biased policing. For example, we found that there are some legitimate factors that explain much of the difference between the frisk rate of black suspects (45 percent) and the frisk rate of white suspects (29 percent). Some of those factors include police policies and practices that can legitimately differ by time, place, and reason for the stop. As a result, the raw statistics, while easy to compute, often exaggerate racial disparities. Any racial disparities in the data are cause for concern. However, accurately measuring the magnitude of the problem can help police management, elected officials, and community members decide between the need for incremental changes in policy, reporting, and oversight or sweeping organizational changes.

Our results using more precise benchmarks do not eliminate the observed racial disparities. However, they do indicate that the disparities are much smaller than the raw statistics would suggest. This result does not absolve the NYPD of the need to monitor the issue, but it also implies that a large-scale restructuring of NYPD SQF policies and procedures is unwarranted. *Id.* at xiv, xv.



70. A summary of one of these recommendations is: “Officers should clearly explain to pedestrians why they are being stopped.” Id. at xv.

71. NYPD has implemented this recommendation in a number of ways including two revisions to the NYPD Patrol Guide, a pilot program encouraging the distribution of information cards, and then a citywide expansion of that pilot program. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

72. In 2009, NYPD promulgated an Interim Order addendum to the NYPD Patrol Guide that encouraged officers to explain the legal authority for a given stop, as well as conditions or situations that may occasion a stop. Addendum to Interim Order NYC-00005363-5382; Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

73. NYPD simultaneously instituted a pilot program in the 32<sup>nd</sup>, 44<sup>th</sup> and 75<sup>th</sup> Precincts in which officers provided an information card to persons who were stopped. NYC\_2\_00004925 (Information Card); Interim Order Revision to Patrol Guide § 212-11 Apr. 23, 2009, (“Revision 4/23/09”) Bates NYC\_2\_00006984.

74. These cards list common reasons why police stop individuals and the legal authority for such stops. NYC\_2\_00004925 (Information Card); Interim Order Revision to Patrol Guide § 212-11 Apr. 23, 2009, (“Revision 4/23/09”) Bates NYC\_2\_00006984.

75. The information cards—“What Is a Stop, Question and Frisk Encounter:”—also contain a statement written in Spanish, Chinese, Korean, Haitian Creole, Russian, and Italian that provides reference to the NYPD website, where translated versions of the form are available. NYC\_2\_00004925 (Information Card); Revision 4/23/09 Bates NYC\_2\_00006984.

76. The pilot program was expanded to all commands citywide. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

77. Officers are encouraged to issue the card to persons stopped whenever practicable. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

78. The citywide expansion was supported by a second addendum to the Patrol Guide, issued on the same date, which explicitly instructed officers in the new program. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

79. The addendum stated that a uniformed member of the service is to: “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.” Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

80. Rand also recommended that the NYPD revise the UF250 form to capture data on the use of force. Grossman Dec. Exh “I”, Rand Summary at xv.

81. NYPD modified the on-line Stop, Question, and Frisk worksheet by incorporating a new category of checkboxes, entitled “Reason for Force Used.” Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

82. These checkboxes encompass the following options: “suspect reaching for suspected weapon,” “defense of self,” “defense of other,” “overcome resistance,” “suspect flight,” and “other,” with a line for entering a relevant description. Officers in the field will shortly have new worksheets reflecting these additional categories of data. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

83. Rand also recommended that new officers should be fully conversant with stop, question and frisk documentation policies. Grossman Dec. Exh “I”, Rand Summary at xvi.

84. Starting with the Academy Class of July 2008, recruits in the Academy also take a written exam that tests their knowledge of when it is necessary to prepare a Stop, Question, and Frisk worksheet. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn.

85. In addition to classroom training, new officers in Field Training now receive an explicit lesson reiterating the nature of this legal standard. Grossman Dec. Exh “J”, NYPD Letter dated 11/15/10 to the Honorable Christine C. Quinn; Chief of Patrol Field Training Unit Program Guide 2009, July 2009 ed. (the “2009 FTU Guide”), NYC\_2\_00005147, attached as Exhibit 4 to 8/7/09 Esposito Tr. The explicit lesson on the legal standard for Stop, Question, and Frisk was added to the NYPD Patrol Services Bureau’s Field Training curriculum in or about 2008. See Albano Tr. at 226:15-231:15; NYC\_2\_4933-5039, NYC\_2\_5040-5136, NYC\_2\_5147-5311, NYC\_2\_5538-5644, NYC\_2\_5645-5767. Prior to 2008, the 2005, 2006 and 2007 FTU Guides addressed stop, question and frisk procedures and UF250s in “FTU lesson #3 Arrest Procedures”. See, NYC\_2\_4960, 4964, 4966; NYC\_2\_5067, 5071, 5073; NYC\_2\_5565, 5569, 5571.

86. In response to Rand’s recommendation that NYPD should consider modifying the audits of the UF250s, NYC\_2\_00007008, to address whether stops are occurring that are not documented, the NYPD conducted 911 audits where QAD randomly selected 911 calls/radio communications to compare against stop, question and frisk forms. April 25, 2008 Memo, NYC\_2\_00006613-NYC\_2\_00006615.

87. For example, if a person was stopped because he or she matched the description of a suspect or victim or other on the NYPD internal radio run, QAD would compare the description of the person who was stopped with the description that was relayed over the NYPD internal radio run. Esposito at 54:15-24.

88. The audit results show that most of the stops subject to the audit were documented. July 18, 2008, Memo, NYC\_2\_00006615-6621.

89. Finally, Rand recommended that NYPD identify, flag, and investigate officers with out-of-the ordinary stop patterns. Grossman Dec. Exh "I", Rand Summary at xvi.

90. The benchmarking software utilized by the RAND Corporation was obtained by NYPD and the program was run against 2007 data. NYPD Internal Benchmark Report NYC00004926 - NYC00004929.

91. The run yielded officers who understopped rather than overstopped African Americans and Hispanics. NYPD Internal Benchmark Report NYC00004926- NYC00004929; 8/19/09 Farrell Tr. 234:21-236:12.

#### COMPSTAT

92. One of the key features of NYPD oversight is the CompStat process. Esposito Dec. at ¶ 2. COMPSTAT, which is short for COMPUter STATistics or COMPARative STATistics is the name given to the NYPD's accountability process and has since been replicated in many other departments. Esposito Dec. at ¶ 2.

93. CompStat is a multilayered dynamic approach to crime reduction, quality of life improvement, department oversight and personnel and resource management and employs Geographic Information Systems, which map crime and identify high-crime and problematic areas. Esposito Dec. at ¶ 3.

94. The CompStat process, adopted in 1994, tracked crime through stick figure statistics and manual pins maps. Esposito Dec. at ¶ 4.

95. Since CompStat was implemented Index Crime (including seven major categories of crime, actively tracked through the CompStat process -- Murder, Forcible Rape, Robbery, Felony Assault, Burglary, Grand Larceny, G.L. Motor Vehicle) has fallen 75.8%. Esposito Dec. at ¶4.

96. The year after CompStat was adopted, 1995, murder was down to 1,181 from 1582, a decrease of 33.9%. Esposito Dec. at ¶4.

97. In 2009, there were 471 murders-the lowest level since 1964. Esposito Dec. at ¶4.

98. Since 2003, crime has dropped by approximately 76%. Esposito Dec. at Exh “A” “Compstat Statistics Volume 17, Number 35 (Report Covering the Week 8/30/2010 through 9/5/2010).”

99. Reports similar to that which is attached as Exhibit “A “ to the Esposito Declaration are posted weekly on the NYPD website and have been since 1995. “NYPD” website, available at [http://www.nyc.gov/html/nypd/html/crime\\_prevention/crime\\_statistics.shtml](http://www.nyc.gov/html/nypd/html/crime_prevention/crime_statistics.shtml); Esposito Dec. at ¶4.

100. On a daily basis, personnel from each of the NYPD’s 76 precincts, nine Police Service Areas and 12 Transit Districts utilize various Department computer applications to document reports of crime and incidents of enforcement activity, which include arrests, summonses and Stop Question and Frisk encounters regularly. Esposito Dec. at ¶5.

101. This data is available for statistical analysis and CompStat reporting. Deposition of Chief Robert Giannelli, Aug. 6, 2009, (“Giannelli Tr.”) at 250-55.

102. The NYPD prepares weekly CompStat reports. Esposito Dec. at ¶ 5; See e.g. Compstat Report Covering the Week of October 27, 2008-November 2, 2008 at Bates No.NYC\_2\_00006238-00006334; Grossman Dec. Exh “O”, Excerpts of Compstat Report Covering the Week of October 27, 2008-November 2, 2008 at Bates No NYC\_2\_00006238-6257.

103. The report captures crime complaints and arrest activity at the precinct, patrol borough and city-wide levels. Esposito Dec. at ¶ 5.

104. The data in the report is presented on a week-to-date, prior 28 days and year-to-date basis, with comparisons to previous years’ activity. Esposito Dec. at ¶ 6.

105. The data in the report is a tool for precinct commanders and members of the agency’s top management to discern emerging and established crime trends, as well as deviations and anomalies. Esposito Dec. at ¶ 4, 6.

106. Department leadership can easily make comparisons between commands. Esposito Dec. at ¶ 6.

107. Based on this information, the NYPD is able to deploy its resources where and when the crime occurs. Esposito Dec. at ¶ 6; Giannelli Tr. at 70:17-71-71:13 (“As I spoke to you before, a primary way to fight crime is to deploy your resources where the crime is happening and to deploy them during the hours the crime is happening”).

108. The CompStat program involves weekly crime control strategy meetings (“Compstat Meetings”). Giannelli Tr. at 246:15-19.

109. Attendance at CompStat is mandatory. Esposito Dec. at ¶ 7.

110. These gatherings increase information flow between the agency's executives and the Borough and local precinct commanders and commanders of other operational units, with particular emphasis on crime and quality of life enforcement and strategies. Esposito Dec. at ¶ 7.

111. Many discussions are based upon statistical analysis. Esposito Dec. at ¶ 7.

112. These meetings facilitate information sharing about crime, trends and successful crime reduction tactics. Esposito Dec. at ¶ 8.

113. Meetings enhance accountability--local commanders must explain their enforcement and deployment decisions in relation to crime in their areas and be aware of crime and quality of life conditions within their areas of responsibility. Esposito Dec. at ¶ 8.

114. The process allows top executives to monitor precincts and operational units, evaluate the skills and effectiveness of managers and properly allocate resources to most effectively reduce crime and improve police performance. Esposito Dec. at ¶ 8.

115. Additionally, the process monitors the number of civilian complaints against members of a command. Esposito Dec. at ¶ 8.

116. Weekly CompStat reports and crime strategy meetings capture data on the number of shooting incidents and shooting victims, as well as gun arrests. Esposito Dec. at ¶ 9.

117. Summons and arrest data are also captured. Esposito Dec. at ¶ 9.

118. In NYPD's view and experience, arresting or issuing summonses to people who engage in minor violations and quality of life offenses--such as public drinking, public urination, playing loud radios, prostitution and disorderly conduct--deters those behaviors. Esposito Dec. at ¶ 9.

119. In NYPD's view and experience, arresting or issuing summonses to people who engage in minor violations and quality of life offenses also deters the escalation of more serious and violent crime. Esposito Dec. at ¶ 9.

120. By capturing data as reflected in summons, arrest and stop, question and frisk activity, the Department is better able to deploy limited resources to where crime is occurring in real time and gauge its overall performance. Esposito Dec. at ¶ 9.

121. Compstat Meetings are convened in a high-tech Command and Control Center and are attended by all commanders of Precincts, Police Service Areas, Transit Districts and other operational unit commanders within a given Patrol Borough, including the commanding officers and /or supervisors of precinct-based and specialized investigative units. Esposito Dec. at ¶ 10.

122. Also in attendance are representatives from the District Attorneys' Offices as well as Transit and Housing Bureau Commanders whose jurisdictions lie within the patrol borough, Crime Strategy Coordinators from other patrol boroughs, and ranking officers from a variety of support and ancillary units (such as the Legal Bureau which do not perform direct enforcement functions.) Esposito Dec. at ¶ 10; Giannelli Tr. at 247:3-6; 251:21-24.

123. This configuration of participants fosters a team approach so that crime and quality of life conditions identified at the meeting can be immediately discussed and quickly addressed (i.e. deployment decisions made) with minimized obstacles and delays. Esposito Dec. at ¶ 10.

124. In addition, the Chief of Department convenes special Compstat meetings held sporadically throughout the year to address patterns like grand larceny patterns, robbery patterns and spikes in crime. Esposito Dec. at ¶ 10.



125. Among the Command and Control Center's high-tech capabilities is its computerized "pin mapping" which displays crime, arrest and quality of life data in a host of visual formats including comparative charts, graphs and tables. Esposito Dec. at ¶ 11.

126. Through the use of geographic mapping software and other computer technology, for example, a precinct map depicting virtually any combination of crime and/or arrest and/or stop locations, crime "hot spots" and other relevant information can be projected on the Center's large video projection screens. Esposito Dec. at ¶ 11.

127. For example, 311 and select 911 calls relating to reports of shots fired and drug sales can also be projected. Esposito Dec. at ¶ 11.

128. Comparative charts, tables and graphs can also be projected simultaneously. These visual presentations facilitate instant identification and exploration of trends and patterns as well as solutions for crime and quality of life conditions, including decisions about how to deploy limited resources. Esposito Dec. at ¶ 11.

129. Every commander is expected to make a Crime Strategy Meeting presentation at various times throughout the year. Esposito Dec. at ¶ 12.

130. During a commander's presentation, members of the Executive Staff ask questions about crime and enforcement activity as well as about specific cases and crime details and initiatives they have undertaken to reduce crime and enforce quality of life offenses. Esposito Dec. at ¶ 12.

131. Commanders are expected to demonstrate a detailed knowledge of the crime and quality of life conditions existing within their commands and to develop innovative and flexible tactics to address them. For example, commanders are questioned about the circumstances surrounding a shooting and what steps they are taking to address the shooting,

whether officers are patrolling the area, developing leads or pursuing individuals who are wanted for particular offenses. Esposito Dec. at ¶ 12.

132. Chief Esposito's main focus at CompStat is on the quality of stops, not quantity and whether stops are based on reasonable suspicion. 8/7/09 Esposito Tr. at 44:14-25, 47:9-24, 59:10-61:2; Charles Ortiz Tr. at 44:17-47:4(Ortiz testified that at Borough Compstat "what they're looking at is individuals to see if the form is prepared correctly, if in the form that it does articulate reasonable suspicion...[a]s part of my presentation...I do a sample prior to going to a borough Compstat. I sample approximately 50 UF-250s and I look at those 250s to make sure that they're filled out properly, that it does articulate reasonable suspicion and that these 250s are in areas where I deployed my men. So that's what we're talking about, and that's the overall quality control."; 182:12-199:22; 188:3-199:22; Raymond Diaz Tr. at 232:9-15; 29:14-30:7, 113:15-25, 116:6-118:13, 120:15;122:3-124:28; 110:22-112:10 (Diaz testified that at the downtown CompStat weekly meetings, "[t]he precinct commanders are questioned as to what the stops were for, the criminal histories of the person stopped, locations of the stops...Let's say you had 10 stops, and [in] all 10 stops there were no criminal histories, the stops were conducted in areas of the precinct where there is not a significant amount of crime, and ...if you have, say, a burglary problem, and the reasons for the stops might be other than burglary, that might be something that might be a question. Cirabisi Tr. 184:8-185:7 (As it relates to 250's, I mean, it comes—when we talk about the 250s and we talk about the filling out of the 250s...when we talk in general about 250s and preparing them, making sure they're done right, making sure that the officers when they're stopping people based on reasonable suspicion that they're filling them out.); Dale Tr. 127:18-142:6 (UF250s are discussed at CompStat meetings on occasion); Mauriello Tr. 41:20-46:4 (At CompStat, "[t]hey look at overall activity. It's in the hot spot

locations. And they want to see what your plan is to prevent—if it's shootings, if it's robberies or burglaries, what is your plan, and are we targeting the right location where the crime is happening...They want to make sure you're doing quality...They're not looking for a number of UF250s. They want to make sure if we're targeting the right locations. If we have a robbery problem in sector Adam, I might put my resources in sector Adam. And did we stop any people who have a prior history in robberies, at the time of the night it's happening, at the location it's happening. They want to make sure we're doing the right thing at the right time...And...are we stopping the people that we reasonably suspect at the time might have, could have or did commit a crime...They look at 250's. They want to know if you're stopping quality. They might run a sample to see these guys-...if you're stopping them in the right area, do they have a NYSID, do they have a robbery history. At CompStat, they don't pull out UF250s at the CompStat. They might review it before you go to CompStat").

133. The NYPD relies on supervisors, namely, sergeants, lieutenants, and precinct commanding officers so that all police activity, including stop, question and frisk, is properly being conducted. 8/7/09 Esposito Tr. at 44:14-25; 46:11-23.

134. Compstat meetings sometimes include a review of a UF250 and a review of the UF250 form. 8/7/09 Esposito Tr. at 366:17-21.

135. The Chief of Patrol's office discusses stop, question and frisk activity with the individual borough commanders and precinct commanders. Giannelli Tr. at 59:13-60:25.

136. A sample of UF250s may be pulled in preparation for a CompStat meeting. The NYPD then reviews the UF250s to determine who was stopped, why he or she was stopped, where he or she was stopped and if there is reason for concern, the UF 250 will be further addressed. 11/23/09 Esposito Tr. at 366:22-367:15.

137. If a certain precinct has few UF250s but higher crime, the Chief of Patrol or the Chief of Department will question the precinct commander to determine if more stops need to be conducted to curb crime. Giannelli Tr. at 268:5-269:2, 270:1-23.

138. Visual surveys of command conditions occur and some are recorded by photographs for use at Compstat meetings to question commanders about their knowledge of crime or quality of life conditions and the steps taken to address them. Esposito Dec. at ¶ 13.

139. The Chief of Patrol's office has a roster of every precinct, for which it will sometimes arbitrarily pull roll calls from various precincts to spot check who is working and whether officers are being deployed at the appropriate times. Giannelli Tr. at 94:2-18.

140. The Chief of Patrol evaluates any anomalies in the number of stop, arrests, or activity in a precinct and questions the precinct commanders about it at CompStat meetings. Giannelli Tr. at 251:8-19.

141. In addition to evaluating and comparing the number of UF250s between the current year and the previous year, CompStat analyzes the crime conditions of the locations where stops are made as reflected on the UF250s. 11/23/09 Esposito Tr. at 371:7-19.

142. The results of the analysis reveal that stops occur where crime occurs and where the public complains about problem conditions. Esposito Dec. at ¶14.

143. Stop, question and frisk activity is commonly discussed at CompStat meetings. Giannelli Tr. at 266:13-267:3.

144. Housing, Transit and the Boroughs also conduct Compstat meetings for their respective commands. Esposito Dec. at ¶ 15.

145. Housing, Transit, Patrol Boroughs and Precincts have access to the same information from which they are able to assess specific crime patterns and utilize the mapping software to identify patterns. Esposito Dec. at ¶ 15.

146. Through the precinct crime information center, precincts are able to distribute or post photographs of suspects or perpetrators who are wanted in connection with crime or for outstanding warrants. Esposito Dec. at ¶ 15.

147. The NYPD reports a record high number of stops by the police department in 2009. 8/7/09 Esposito Tr. at 342:14-24; 01/13/10 Pulaski Tr. at 308:19-309:13.

148. There was a decrease in overall crime in 2009. 8/7/09 Esposito Tr. at 342:14-24

149. NYPD prepared a report entitled “Crime and Enforcement Activity in New York City (Jan.1-Dec31, 2008) (“ The 2008 Enforcement Report”). NYC\_2\_00004472-91, an excerpt of which is attached at Grossman Dec Exh “Q”.

150. With respect to Violent Crime and Stop Question and Frisk Activity in 2008, NYPD data, as reflected in the Enforcement Report, shows as follows:

The most frequently occurring race/ethnic group within the Violent Felony suspects is Black, accounting for 68.2%. Hispanic suspects account for an additional 24.4% while white and Asian/Pacific Islanders account for 5.5% and 1.8% respectively.

The most frequent race/ethnic group within the Stop Question and Frisk subject population is Black, accounting for 53.2%. Hispanic subjects account for an additional 32.3% while White and Asian/Pacific Islanders account for 11.0% and 3.1% of total Stops respectively.

Grossman Dec Exh “Q” at NYC\_2\_00004491.

151. NYPD prepared a report entitled “Crime and Enforcement Activity in New York City (Jan.1-Dec31, 2009) (“ The 2009 Enforcement Report”). See website at

[http://www.nyc.gov/html/nypd/downloads/pdf/analysis\\_and\\_planning/YearEnd2009EnforcementReport.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/YearEnd2009EnforcementReport.pdf)., an excerpt of which is attached at Grossman Dec Exh “Q”.

152. With respect to Violent Crime and Stop Question and Frisk Activity in 2009, NYPD data, as reflected in the Enforcement Report, shows as follows:

The most frequently occurring race/ethnic group within the Violent Felony suspects is Black, accounting for 65.9%. Hispanic suspects account for an additional 26.6% while white and Asian/Pacific Islanders account for 5.3% and 2.1% respectively.

The most frequent race/ethnic group within the Stop Question and Frisk subject population is Black, accounting for 55.2%. Hispanic subjects account for an additional 32.0% while White and Asian/Pacific Islanders account for 9.5% and 3.0% of total Stops respectively.

Grossman Dec. Exh “Q” at 15 of 16.

#### Operation Impact

153. In January 2003, NYPD implemented a crime-reduction strategy known as “Operation Impact”. In NYPD’s view, Operation Impact had a positive effect on crime rates. Esposito Dec. at ¶ 16.

154. “Index Crime’ (seven major categories of crime, actively tracked through the CompStat process--Murder, Forcible Rape, Robbery, Felony Assault, Burglary, Grand Larceny, G.L. Motor Vehicle) fell by more than 27% from 2003 to 2009. Esposito Dec. at ¶ 16.; *Seven Major Felony Crimes 2000-2009, Historical New York City Crime Data*, NYPD.COM, [http://www.nyc.gov/html/nypd/downloads/pdf/analysis\\_and\\_planning/seven\\_major\\_felony\\_offenses\\_historical\\_data.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/seven_major_felony_offenses_historical_data.pdf) (last visited Feb. 1, 2011).

155. In 2007, New York City saw fewer than 500 murders, the lowest number since the advent of modern record-keeping 45 years ago. Esposito Dec. at ¶ 16.

156. Operation Impact resulted from understanding that crime, after having been reduced to historically low levels, survived in isolated pockets across the city. Esposito Dec. at ¶ 17.

157. In NYPD's view and experience, addressing these "hot spots" of crime represented the best way to deploy limited resources and best avenue to deter and achieve further reductions in crime. 8/7/09 Esposito Tr. at 198:24-200:6; Giannelli Tr. at 58:6-17.

158. Based on an analysis of data, Operation Impact deploys concentrations of officers to delineated high-crime areas known as "Impact Zones". Esposito Dec at ¶ 18; 8/7/09 Esposito Tr. at 196:15-20; Giannelli Tr. at 280:15-25 at 124:7-17.

159. The NYPD employs its mapping and statistical tools to analyze crime data-type, location, time, and date to identify these impact zones. Esposito Dec. at ¶ 18.

160. Once Impact Zones are identified, NYPD determines the number of officers and equipment to deploy to any particular zone. 8/7/09 Esposito Tr. at 198:24-200:6; Gianelli Tr. at 58:6-17. Operation Impact focuses its efforts on addressing ongoing crime trends. Esposito Dec. at ¶ 18. The reason NYPD deploys resources to Impact Zones is because in its view, it deters violent crime, shootings, gang, narcotic and quality of life issues. Esposito Dec. at ¶ 18.

161. The NYPD deploys a majority of its Academy's graduating officers via Operation Impact to specific Impact Zones throughout the city. 8/7/09 Esposito Tr. at 196:15-20; Giannelli Tr. at 124:7-17.

162. Operation Impact officers are assigned foot posts and for the most part do not respond to time-consuming radio runs. Esposito Dec. at ¶ 19.

163. The sergeant to officer ratio for Operation Impact is generally lower compared to the sergeant to officer ratio for regular tours. Giannelli Tr. at 121:18-122:15.

164. The ratio of supervising sergeants to officers on Operation Impact ranges between 1: 8 to a maximum of 1:12. Giannelli Tr. at 121:18-12; 123:11-124:6. Experienced Operation Impact officers are intermingled with Operation Impact officers who have been out of the academy one year or less. The number of experienced officers in a group with officers out of the academy one year or less depends on the number of officers in a zone. “We would have some officers assigned who have more experience so they can serve as training officers”. Gianelli Tr. at 125:5-125:25; 119:15-20;

165. Supervisors have an opportunity to observe officers on post and observe enforcement because officers are on foot patrol, in a confined area. Esposito Dec. at ¶ 19.

166. Chief Esposito testified that the NYPD handpicks supervising sergeants, lieutenants and captains to oversee the officers who are assigned to Operation Impact. 8/7/09 Esposito Tr. at 196:15-197:25.

167. In Impact Zones, the sergeants report directly to their assigned lieutenants and captains. Giannelli Tr. at 126:14-127:1.

168. The Chief of Patrol’s office reviews the crime increases or decreases within the precinct, how the precincts are responding to crime, how the precincts are managing their officers, and whether the precincts are deploying their officers to the areas where crime is higher at the times when crime is more likely to occur. Giannelli Tr. at 91:6-92:9.

169. Less experienced officers in Operation Impact are supervised more closely by sergeants than senior officers. Giannelli Tr. at 123:23-124:6; 121:19-122:7.



170. Supervisors review stops, summonses and arrests made by officers in Operation Impact. 8/7/09 Esposito Tr. at 267:13-17.

171. The Department monitors these Impact Zones on a daily basis, tracking crime, enforcement and officer deployment. Esposito Dec. at ¶ 19.

172. The Chief of Patrol's office reviews UF250s in order to determine whether the precinct as a whole is properly deploying its resources. Giannelli Tr. at 68:7-69:25; 76:6-12.

173. Additionally, the Chief of Patrol's office conducts several intelligence briefings in a week to examine current crime trends and conditions. Esposito Dec. at ¶ 19.

174. An example of Operation Impact is its use in the City's 75th Precinct. Esposito Dec. at ¶ 20.

175. When mapping revealed that this precinct, one of the city's largest, had one of the City's highest crime rates, the Department launched a modified version of the program, then titled "Operation Trident", to focus exclusively on that area. Esposito Dec. at ¶ 20.

176. The 75<sup>th</sup> Precinct's unique geographical dimensions and crime patterns led the Department to create three separate geographical areas each run by a Police Captain. Esposito Dec. at ¶ 20.

177. These areas were allotted resources and officers, thereby cutting down on response times, increasing police presence, and targeting crime where it occurs. Esposito Dec. at ¶ 20. NYC\_2\_00006304

178. Historically, the Impact Program has been redeployed in cycles, approximately every six months, utilizing a significant number of officers from each graduating Police Academy class. Esposito Dec. at ¶ 21.

179. Since December 2007, the Department increased personnel in Operation Impact by assigning new recruits and retaining some of the existing officers, as well. Esposito Dec. at ¶ 21.

180. Recognizing Operation Impact's value, on July 20, 2010, the State of New York awarded Operation Impact crime-fighting grants totaling \$13.5 million to upstate and Long Island counties. "Governor Paterson Announces Operation Impact Grants for Upstate New York and Long Island," available at <http://criminaljustice.state.ny.us/pio/press>.

#### Impact Overtime

181. Impact Overtime is another creative crime-reduction strategy where officers, both rookies and veteran officers, receive overtime for patrolling high-crime neighborhoods. 8/7/09 Esposito Tr. at 201:25-202:8.

182. Impact Overtime was created to suppress violent crime in the areas and at the times when the largest amount of violent crime took place. Giannelli Tr. at 326:25-327:25-328:10.

183. Officers assigned to Impact Overtime are likely going to conduct more stop, question and frisks because they are not bound to respond to radio calls, have more time to investigate, are more likely to recognize suspects because they speak directly to complainants of violent crimes, and are in high-crime areas. Giannelli Tr. at 284:2-287:2.

184. The Chief of Patrol tracks the UF250s completed by the Impact Overtime team to analyze any anomalies; namely, whether the number of UF250 forms correlate to the amount of crime. Giannelli Tr. at 347:5-20.

#### Deployment of Anticrime

185. Another crime reduction strategy is anticrime. Anticrime officers generally carry out their responsibilities in plainclothes. The ratio of supervisors to officers in an anti-crime team is approximately 1 to 5. Giannelli Tr. at 275:9-16.

186. The boroughs within the police department analyze crime patterns in order to make decisions on where to deploy members of their anti-crime units. 8/7/09 Esposito Tr. at 111:9 – 112:4.

187. Boroughs analyze crime in order to determine anticrime deployment weekly or every 28 days. 8/7/09 Esposito Tr. at 112:5-18; Giannelli Tr. at 81:2-82:5.

188. The kind of crime that an anticrime unit addresses varies from borough to borough. 8/7/09 Esposito Tr. at 118:14-21.

189. The NYPD evaluates the number and quality of UF250s completed by borough and individual precinct's anticrime units and whether the stops are based on reasonable suspicion. Giannelli Tr. at 77:8-21; 8/7/09 Esposito Tr. at 122:14-22.

190. In addition to reviewing the number of UF250s, the Chief of Patrol's office analyzes the time and day that UF250s are being written in order to determine whether the stops are proportionately being conducted during times when there is higher crime. Giannelli Tr. at 82:683:3; 84:1-85:8.

### Training

191. The NYPD provides multiple levels of training for officers with varying responsibilities and levels of experience, at the recruit level, as a full member of service and at the supervisory and management levels. *See* [http://www.nyc.gov/html/nypd/html/training\\_nypd/pa.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/pa.shtml).

192. The NYPD provides up to thirteen (13) separate types of training. *See* [http://www.nyc.gov/html/nypd/html/training\\_nypd/pa.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/pa.shtml).

193. Training is provided by subunits of the NYPD's Training Bureau or by any of the NYPD's other bureaus that also conduct training. [http://www.nyc.gov/html/nypd/html/police\\_academy/police\\_academy.shtml](http://www.nyc.gov/html/nypd/html/police_academy/police_academy.shtml).

194. Various methods are used including review of written materials, Albano Tr. at 73:4-74:4, lectures using the Socratic method, Albano Tr. at 59:24-60:16, and role-playing and scenario-based exercises, Albano Tr. at 112:11-22. *See also* [http://www.nyc.gov/html/nypd/html/training\\_nypd/recruit\\_training\\_.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/recruit_training_.shtml).

#### Police Academy Training

195. The Police Academy provides a six-month training program for new recruits. [http://www.nyc.gov/html/nypd/html/training\\_nypd/recruit\\_training\\_.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/recruit_training_.shtml). The following courses cover various topics including, but not limited to stop, question and frisk related issues, law of reasonable suspicion and probable cause, issues concerning racial profiling, policing impartially and policing professionally. Police Student's Guide: Policing Impartially, 6/26/2003, NYC-P00010694-713, July 2004, NYC-00000668-736, January 2005, NYC-00000737-751, January 2006, NYC-00000904-923, January 2007, NYC-00001065-83, July 2007, NYC-00001945-63, July 2008, NYC-P00010157-76, July 2009, NYC-000536-5408. Police Student's Guide: Policing Legally - Street Encounters, 8/22/2003, NYC-P00010714-42, July 2004, NYC-00000642-667, January 2005, NYC-00000827-851, January 2006, NYC-00000924-950, January 2007, NYC-00001475-1499, July 2007, NYC-00001920-44, January 2008, NYC-00004112-35, July 2008, NYC-P00010177-202; Police Student's Guide: Policing With Integrity, July 2004, NYC-00002751-68, January 2005, NYC-00002475-2526,

January 2007, NYC-00002172-2222, July 2007, NYC-00002058-2108; Police Student's Guide: Policing Professionally, July 2004, NYC-00002751-68, January 2005, NYC-00002603-20, January 2006, NYC-00002377-94, July 2007, NYC-00001964-1982; Police Student's Guide: Criminal Procedures, January 2005, NYC-00000852-903, January 2006, NYC-00000951-999, January 2007, NYC-00001426-1474, July 2007, NYC-00001332-1380, Police Student's Guide: Discretion, January 2007, NYC-00001500-1525, July 2007, NYC-00001400-1425. Police Student's Guide: Integrity Crimes and Liability Issues, January 2005, NYC-00002527-2558, January 2006, NYC-00002442-2474, July 2007, NYC-00001892-1919. Police Student's Guide: Policing A Multicultural Society, January 2005, NYC-00002625-2705, January 2006, NYC-00002298-2376, January 2007, NYC-00002223-2297, July 2007, NYC-00001983-2057. Police Academy Recruit School Lesson, Policing Legally: Street Encounters (rev. November 18, 2008), NYC2\_00006932-948 (confidential).

196. The first half of Academy training consists of the Knowledge and Fitness segment. Albano Tr. 150:2-5.

197. The Knowledge and Fitness segment has a mainly classroom-based academic curriculum including courses in Law, Police Science and Behavioral Science. *See* [http://www.nyc.gov/html/nypd/html/training\\_nypd/recruit\\_training\\_.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/recruit_training_.shtml).

198. The second half of Academy training is the Skills and Abilities segment. Albano Tr. at 150:2-12.

199. The “multicultural immersion” portion of recruit training involves numerous role-playing exercises, of which some relate to, and reinforce, the lessons on SQFs and the establishment of reasonable suspicion factors. Albano Tr. at 119:4-14.

200. Role-playing exercises reinforcing courtesy and departmental values also relate to SQF procedures. Forms Workshop Lesson Plans, Instructor Assessment Guide, October 2008, NYC-P00008532, at -575-582; Albano Tr. at 145:11-146:10.

201. Recruits receive approximately 10.5 hours of training on the law governing street encounters including, among other things, SQFs, reasonable suspicion, racial profiling and documentation. Police Academy Recruit School Lesson, Policing Legally: Street Encounters (rev. November 18, 2008), NYC\_2\_00006932-948 (Confidential).

202. Officers receive Police Academy training that racial profiling is prohibited. See, Joyce Tr. At 225:25-227:6; Moran Tr. At 48:3-49:12; Eddy Tr. At 242:11-24.

203. Recruits attend a 4.5-hour workshop on SQF role-playing exercises. Instructor Assessment Guide, Stop, Question, and Frisk Role-Play, December 18, 2003, NYC\_2\_00005801-808.

204. Recruits also receive a series of training memos and special videos about street encounters and the law of reasonable suspicion and probable cause. Police Academy Training Memo #05-07, February 2007, NYC-00004217 or NYC-P00008586; Police Academy Training Memo #18-07, April 2007, NYC-00004218-19 or NYC-P00008587-588; Police Academy Training Memo #29-07, August 2007, NYC-00004220-22 or NYC-P00008589-591; NYPD Stop, Question & Frisk Training Videos, NYC\_2\_00004238 (DVD format).

205. Recruits are evaluated using mandatory homework, monthly exams and quizzes and their performance in role-playing exercises. Albano Tr. at 168:16-171:23.

206. Recruits are instructed to document their activity in an activity log. Police Academy Training Memo #07-08, February 2008, NYC-00004321-322.  
In-Service Training

207. After graduating from the Academy, training continues throughout an officer's career in the NYPD using a mix of written materials and audio-visual materials, *see* NYPD Stop, Question & Frisk Training Videos, (NYC\_2\_00004238 (DVD format)), verbal instruction and analytic exercises using the Socratic method, *see* Albano Tr. at 59:24-60:16, and role-playing exercises in which performance is evaluated, *see* Albano Tr. at 112:11-22.

208. Officers receive mandatory annual training, which is generally referred to as "in-service" training. Albano Tr. at 13:18-14:24; 222:10-19.

209. Officers are required to attend training twice a year on certain topics, and at least once a year on certain other topics such as the in-service tactical ("In-Tac") training (which also includes SQF procedures). Albano Tr. at 13:18-14:19, 15:10-23, 16:12-17, 19:11-18.

210. In Tac training includes Operation Impact training. Albano Tr. at 222:15-223:6. The training provided to Operation Impact officers is governed by the Field Training Unit Guide, which covers topics including, but not limited to stop, question and frisk related issues, the law of reasonable suspicion and probable cause, issues concerning racial profiling, integrity, ethics and police paperwork and documentation. Chief of Patrol Field Training Unit Program Guide 2009, July 2009 ed. (the "2009 FTU Guide"), NYC\_2\_00005147, at -208-252 (Lesson 7), attached as Exhibit 4 to 8/7/09 Esposito Tr.; 2008 FTU Guide, NYC\_2\_5645-5767 (at NYC\_2\_5679-5695); 2007 FTU Guide, NYC\_2\_5538-5644 (at NYC\_2\_5565, 5569, 5571); 2006 FTU Guide, NYC\_2\_5040-5146 (at NYC\_2\_5067, 5071, 5073); 2005 FTU Guide, NYC\_2\_4933-5039 (at NYC\_2\_4960, 4964, 4966).

211. Prior to 2008, the 2005, 2006 and 2007 FTU Guides addressed stop, question and frisk procedures and UF250s in "FTU lesson #3 Arrest Procedures". *See*

NYC\_2\_4960, 4964, 4966; NYC\_2\_5067, 5071, 5073; NYC\_2\_5565, 5569, 5571. Albano Tr. at 10:22-11:9, 27:8-25.

212. Officers assigned to Operation Impact receive Impact Training (formerly known as field training), from training sergeants. Albano Tr. at 85:3-86:4.

213. The patrol services bureau provides Operation Impact in-service training to Operation Impact officers in every precinct. Giannelli Tr. at 141:8-16.

214. The FTU Guide contains structured lesson plans and training references for use by training sergeants and impact sergeants. See, Introduction, 2009 FTU Guide, NYC\_2\_00005147, at 148.

215. The FTU Guide lessons are cross-referenced with the Patrol Guide and made available to all uniformed members. See, Introduction, 2009 FTU Guide, NYC\_2\_00005147, at -148.

216. A special training coordination unit produced the FTU Guide. Mulligan Tr. 23:18-22.

217. Officers in Impact Training also receive SQF training as part of their annual in-service tactical training. Albano Tr. At 19:4-24.

218. Training sergeants are a command's primary training instructors and field training coordinators and themselves receive special training. Albano Tr. at 189:24-190:8.

219. Training Sergeants visit and train officers at their precincts and cover various topics including SQFs. Albano Tr. at 55:2-8, 58:21-59:9.

220. Ongoing training of officers throughout their career builds upon Police Academy coursework. Mulligan Tr. at 33:2-7.



221. Officers also receive “roll call” training, which is given at the start of an officer’s shift, or tour, by precinct supervisors and training sergeants. Albano Tr. at 96:4-24.

222. Officer training includes role-playing scenario instruction on cultural diversity, which involves SQF procedures. Multicultural Immersion Course, Lesson Plan Cover Sheet, April 2007, NYC\_2\_00005809-815; Albano Tr. at 119:4-14.

#### Special Unit Training

223. Officers assigned to specialized units, such as the plainclothes unit, also receive specialized training tailored to their unit. Albano Tr. at 99:15-21.

224. Plainclothes training includes classroom lectures, role-playing and tactical training. Albano Tr. at 101:13-18.

225. Plainclothes training covers SQF procedures and the law of reasonable suspicion. Albano Tr. at 225:22-226:5; Lesson Plan, Basic Plainclothes Training: Assorted Law Topics, 05/16/06, NYC\_2\_00005786-5791, Lesson Cover Sheet, Basic Plainclothes Course: Handgun Disarming Techniques, rev. Sept. 1999, NYC018357-18362, Lesson Cover Sheet, Basic Plainclothes Course: Body Mechanics and Safe Separation, rev. March 1999, NYC018333-18340, Lesson Cover Sheet, Basic Plainclothes Course: Personal Weapons Counterstrikes, rev. March 1999, NYC018341-18345, Lesson Cover Sheet, Basic Plainclothes Course: Ground Defense Techniques, rev. March 1999, NYC018346-18351, Lesson Cover Sheet, Basic Plainclothes Course: Weapon Retention Techniques, rev. March 1999, NYC018352-18356, Lesson Cover Sheet, Basic Plainclothes Course: Subject Control Techniques, rev. March 1999, NYC018363-18369, Lesson Cover Sheet, Basic Plainclothes Course: Pressure Point & Pain Compliance Techniques, rev. Sept.1998, NYC018370-18375, 3-Day Plainclothes Assignment Course, 1996, NYC018277-18324.

Command Training

226. All officers responsible for or involved in training are given a form of in-service training called command training. Albano Tr. at 93:22-96:24.

227. This training includes monthly seminars held by a training sergeant who is the primary training instructor for members of his or her command. Albano Tr. 95:3-20.

Promotional Training

228. Promotional training is given to newly promoted sergeants and lieutenants, including in-service training tailored specifically for these supervising officers. [http://www.nyc.gov/html/nypd/html/training\\_nypd/Leadership%20Development%20Section.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/Leadership%20Development%20Section.shtml).

229. This training uses lectures and simulation-based exercises on topics including the law of reasonable suspicion, SQF, management skills and proper documentation. Sergeants Leadership Course, Lesson Plan Cover Sheet, NYC\_2\_00005849-853 (14-hour lesson using simulations); Sergeants Leadership Course, Lesson Plan Cover Sheet, NYC\_2\_00005854-858 (one-hour lesson on SQF); Albano Tr. at 61:2-7.

230. Sergeants, lieutenants and civilian supervisors are required to attend two full-day professional seminars each year. *See, generally,* Sergeants Leadership Course, Lesson Plan Cover Sheet, NYC\_2\_00005849-853 (14-hour lesson using simulations);

231. Sergeants, lieutenants and civilian supervisors are required to attend one session each year of an in-service, scenario-based, leadership training simulation program called L.E.A.D.training. [http://www.nyc.gov/html/nypd/html/training\\_nypd/Leadership%20Development%20Section.shtml](http://www.nyc.gov/html/nypd/html/training_nypd/Leadership%20Development%20Section.shtml).

Training in Other Issues

232. Officers are trained on activity log procedures as Police Academy recruits, during Operation Impact training and through precinct-based training. Albano Tr. 180:7-19; *see* Operations Order No. 44, Activity Logs, issued September 11, 2008, NYC-00004319-320.

233. In addition, a Police Academy Training Memo entitled “Activity Log Entries” was issued. Police Academy Training Memo #07-08, February 2008, NYC-00004321-322.

234. Certain written materials are provided to Members of Service in the field as a quick reference. For example, Officers are provided a memobook insert containing a summary of the law regarding street encounters, including the legal basis for conducting a stop, question and frisk. Grossman Declaration, Exh. “K”, Street Encounters Legal Issues Bates No NYC-00005428-29.

#### Accreditation

235. The NYPD Training Bureau was accredited by the Commission on Accreditation for Law Enforcement Agencies (“CALEA”) in November 2006 and re-accredited in November 2009. *See* <http://www.calea.org/content/calea-client-database;> [http://www.nyc.gov/html/nypd/html/pr/pr\\_2006\\_056.shtml](http://www.nyc.gov/html/nypd/html/pr/pr_2006_056.shtml) (NYPD Press Release 2005-056, “The New York City Police Department Announces Accreditation By The Commission on Accreditation for Law Enforcement Agencies,” released March 14, 2007) (“NYPD March 2007 Press Release”).

236. Accreditation of the NYPD Training Bureau followed a three to four year process which included in-depth reviews of the NYPD’s certification of instructors, recruitment and selection of applicants, instructional systems and program development. [http://www.nyc.gov/html/nypd/html/pr/pr\\_2006\\_056.shtml](http://www.nyc.gov/html/nypd/html/pr/pr_2006_056.shtml), NYPD March 2007 Press Release.

Officer Testimony Regarding Reasonable Suspicion and Training

237. Officers testified about their understanding of the law of reasonable suspicion. *See* Salmeron Tr. at 31:6-32:4, 33:25-34:25, 39:13-44:13; Moran Tr. at 45:24-48:2, 77:16-79:16, 92:23-94:10, 99:6-101:21; Pichardo Tr. at 56:15-58:4, 67:12-68:18; Ruggiero Tr. at 154:19-155:11; Cousin-Hayes Tr. at 113:20-116:7, 168:25-171:9; Hegney Tr. at 90:4-22, 95:7-97:25, 110:16-111:10, 171:9-172:2, 175:5-14, 281:3-283:4; Giannelli Tr. at 96:17-98:8, 109:22-112:3, Joyce Tr. at 115:22-116:7, 150:18-152:11 (“My understanding [as to when you can make a stop] is that if you have reasonable suspicion a felony or misdemeanor, that has been, will be or about to be committed.”), 152:19-153:3 (“You obtain what you think are actions which would lead you to believe that a felony, misdemeanor, has, will or is about to be committed.”), 155:19-156:24 (“Reasonable suspicion is when you have reason to believe that a crime has been committed, because of different factors.”), 175:19-176:5, Riley Tr. at 39:13-40:2; Eddy Tr. at 229:5-24, 235:18-236:9, 236:17-25; Barrelli Tr. at 88:24-89:10; Ortiz Tr. at 197:15-199:9 (“reasonable suspicion [is when] a crime is about to be committed, [is being] committed or has been committed”); Guimaraes Tr. at 24:18-26:14; Cirabisi Tr. at 68:18-69:21; Peters Tr. at 28:17-29:5; McCarthy Tr. at 67:17-68:25; Dale Tr. at 66:12-67:9 (“[E]very time we stop somebody, we have to . . . be able to articulate a reason why we do it. We just can’t stop people willy-nilly. We have to have a reason, a reasonable suspicion, before we stop someone.”), 68:4-69:15, 73:7-74:4, Esposito Tr. at 349:3-350:8; Conaghan Tr. at 101:18-102:2; Tzimirotas Tr. at 84:17-85:20, 87:14-88:6, 89:23-92:12; Dang Tr. at 42:8-43:6, Noboa Tr. at 11:3-12:5, 72:2-6, 73:24-74:13; Rodriguez Tr. at 142:19-24; Gonzalez Tr. at 12:19-14:2, 38:17-39:13, 47:18-48:18; Telford Tr. at 46:22-47:22, 49:4-51:17, 85:9-86:23, 106:11-107:9; Farrell Tr. at 81:10-20 (“An officer is required to complete a form [UF-250] when he or she stops a person upon reasonable

suspicion that they have committed, are committing or may be about to commit a felony or penal law misdemeanor.”); Hu Tr. at 37:3-39:2, 45:18-48:15, 53:11-61:23, 82:7-84:15; Trunzo Tr. at 41:23-42:21; Blakely Tr. at 15:3-16:12 (redacted), Velazquez Tr. at 75:6-76:14 (redacted)(“Reasonable suspicion, you have a set of circumstances, it could be the time of day, where they’re coming from, if they fit a description that was given by a victim, a complainant, or by the radio when it comes over a 911 call.”), Salmeron Tr. at 59:16-61:11; Navaretta Tr. at 27:15-28:11, 41:5-22; 50:22-51:4; Pillai-Abdul Tr. at 23:21-24:4; Agron Tr. at 138:4-139:7, 161:13-163:2..

238. Officers testified that Police Academy cadets received training on SQF procedures, the concept of reasonable suspicion, or the documentation requirements for SQFs. *See* Joyce Tr. at 48:13-49:2, 56:3-12; Moran Tr. at 40:19-41:14, 41:22-42:25, 91:18-92:2; Pichardo Tr. at 66:8-67:3 (reasonable suspicion), 75:22-76:21 (UF-250), 76:22-77:22, 256:10-257:4; Albano Tr. at 113:19-116:25, 118:18-119:14 (“there are numerous role plays, some of which relate to stop, question and frisk, and establish reasonable suspicion factors”), 128:21-129:6, 147:21-156:4, 158:3-162:8, 163:16-169:4; 175:23-185:15, 188:5-189:10; Eddy Tr. 235:22-236:4; Diaz Tr. at 57:12-58:16; Tzimirotas Tr. at 84:17-85:17, 90:10-12; Noboa Tr. at 72:7-14; Gonzalez Tr. at 12:19-14:2, 54:21-55:3, Navaretta Tr. at 50:2-15; Trunzo Tr. at 43:23-44:6; Blakely Tr. at 15:3-16:12 (redacted); Pillai-Abdul Tr. at 23:15-24:4; Herran Tr. at 17:20-24 (confidential).

239. Academy cadets were taught the legal bases for stops, including the standards for the common law right of inquiry, reasonable suspicion and probable cause. *See* 3/9/10 Gonzalez Tr. at 12:19-14:2; Moran Tr. at 40:23-41:19; Tzimirotas Tr. at 84:17-89:22;

Eddy Tr. at 235:14-17, 236:17-25. Academy training also covered the prohibition on racial profiling. *See* Eddy Tr. at 242:11-24.

240. After graduation from the Police Academy, new officers received training on SQF procedures, the concept of reasonable suspicion, and the documentation requirements for SQFs. *See* Albano Tr. 13:11-14:10, 15:10-16:17, 189:12-192:6, 222:11-226:11, 226:13-233:21, 236:10-237:2, 238:7-239:20, 240:19-247:19; Moran Tr. at 68:9-22; Pichardo Tr. at 75:18-21, 76:22-77:12 (UF-250), 256:10-257:4; Cousin-Hayes Tr. at 171:3-7 (SQF training); Hegney Tr. at 106:19-108:9 (reasonable suspicion); Esposito Tr. at 146:20-148:12; Eddy Tr. at 229:5-230:19, 231:20-23, 235:22-236:9; Diaz Tr. at 57:12-59:19; Tzamorotas Tr. at 84:17-86:4, 89:23-90:6, 90:13-15; Noboa Tr. at 72:7-11, 72:18-73:17; Trunzo Tr. at 44:7-11; Blakely Tr. at 15:3-16:16 (redacted); Pillai-Abdul Tr. at 22:18-21, 23:21-24:9; Herran Tr. at 17:16-18:18; Joyce Tr. at 115:22-116:7, Hernandez Tr. at 198:19-199:6, Gonzalez Tr. at 43:12-44:19, 47:18-48:18, 55:4-16; Salmeron Tr. at 192:25-193:14.

241. Officers testified that supervisors and training sergeants train officers on SQF procedures and documentation, and reasonable suspicion. *See* Joyce Tr. at 162:22-163:23, 175:19-176:5, 192:5-193:4; Moran Tr. at 68:9-22, 69:15-70:25, 101:22-104:19, 108:10-109:19; Agron Tr. at 94:18-95:5 (ensured proper procedures were being followed); Peters Tr. at 99:10-100:2, 110:24-111:17; Diaz Tr. at 57:12-59:19; Dang Tr. at 103:10-104:10, 105:6-106:3, 106:13-22; Noboa Tr. at 79:18-80:4, 82:18-83:19, 84:24-85:7, 115:13-116:4; Telford Tr. at 41:2-42:7, 46:22-47:22, 49:4-51:17, 85:9-86:23, 88:2-22; Blakely Tr. at 15:3-16:12 (redacted); Salmeron Tr. at 76:19-77:17; Tzamorotas Tr. at 84:17-86:4; Pillai-Abdul Tr. at 22:18-21; Ruggiero Tr. at 48:23-49:7; Cousin-Hayes Tr. at 121:10-13; Albano Tr. at 175:23-185:15, 188:5-189:10.

242. Officers in specialized units such as the plainclothes unit received instruction on SQF requirements including the necessity to have a reasonable suspicion for a stop. *See* Gonzalez Tr. at 48:3-49:16.

243. Officers received on the job training regarding stops and documenting them on UF-250s. *See* Pichardo Tr. at 113:25-115:24; 111:16-112:6; 113:25-115-24; Tzamorotas Tr. at 84:17-89:22; Eddy Tr. at 202:13-209:24; Bennet Tr. at 100:13-101:25. Officers receive training on the UF-250 while in Operation Impact. *See* Cousin-Hayes Tr. at 121:5-18.

244. Officers indicated that their training sergeants were available to clarify legal issues if needed. *See* Hernandez Tr. at 53:11-17; Hu Tr. at 16:21-17:11. Training sergeants provided scenarios at roll call to help demonstrate lessons on when to make a stop and how to determine reasonable suspicion or probable cause. *See* Herran Tr. at 18:7-18. Training sergeants also addressed the issue of documenting stops on UF-250s and in memo books. *See* Navaretta Tr. at 26:14-27:14. Officer Joyce recalled receiving training from the precinct training sergeant on filling out activity logs properly. Joyce Tr. at 58:15-25.

245. Officers testified that supervisors and training sergeants trained them on SQF procedures, reasonable suspicion, SQF documentation requirements or policy against racial profiling. *See* Joyce Tr. at 162:22-163:23, 192:5-193:4; Moran Tr. at 68:9-22, 69:15-70:25, 101:22-104:19; Agron Tr. at 94:18-95:5 (ensured proper procedures were being followed); Peters Tr. at 99:10-100:2, 110:24-111:17; Diaz Tr. at 57:12-59:19; Dang Tr. at 103:10-104:10, 105:6-106:3, 106:13-22; Noboa Tr. at 84:24-85:7, 115:13-116:4; Telford Tr. at 41:2-42:7, 46:22-47:22, 49:4-51:17, 85:9-86:23, 88:2-22; Blakely Tr. at 15:3-16:12 (redacted), Eddy Tr. at 229:5-24, 231:10-23; Gonzalez Tr. at 43:12-44:19, 47:18-48:18, Pillai-Abdul Tr. at 22:18-21.

246. Officers are instructed that it is NYPD procedure to explain to individuals why they were stopped, where possible. *See* Dale Tr. at 27:5-8; Phipps Tr. at 181:16-20. Officers explained to individuals whom they did not arrest why they were stopped. Pollack Tr. at 135:16-23; Ruggiero Tr. at 80:24-21:3, 157:19-21; Joyce Tr. at 160:7-22.

### Supervision

247. The NYPD functions through a chain of command. 8/7/09 Esposito Tr. at 167:11-168:4.

248. The police department's hierarchy from lowest ranking officer to highest is police officer, sergeant, lieutenant, captain, inspector, deputy chief, assistant chief, bureau chief, chief of patrol and chief of department. 8/7/09 Esposito Tr. at 96:1-21.

249. Police officers report directly to Sergeants. 8/7/09 Esposito Tr. at 96:1-21.

250. Precinct Commanders report to borough commanders. 8/7/09 Esposito Tr. at 96:1-21; Deposition Transcript of Chief Robert Giannelli ("Giannelli Tr."), August 6, 2009 at 89:17-90:25.

251. Supervisors, including Sergeants, are responsible for overseeing that police officers enforce the law in compliance with the Constitution, department procedures, guidelines and training. 8/7/09 Esposito Tr. at 271:2-9; 272:12-23.

252. Patrol Supervisors are responsible for overseeing police field operations within their commands during a tour of duty. Grossman Dec. Exh. "L", Patrol Guide 202-17 ¶ 12 "Duties and Responsibilities" of a Patrol Supervisor ("PG 202-17") at Bates No. NYC\_2\_00011852.

253. Part of every supervisor's job in the NYPD is to train his or her subordinates, sometimes in the field at the scene of an incident. Giannelli Tr. at 142:16-144:8.



254. Police officers attend roll call where they receive their assignments, which may cover a sector or post within a particular precinct. Grossman Dec. Exh. M, Patrol Guide 202-21 “Duties and Responsibilities” of a Police Officer (“PG 202-21) Bates No NYC\_2\_00011851 and Exh. L, PG 202-17 Bates No NYC200011852; *See* “Performance Evaluation Guide: Sergeant,” Bates No NYC016201-NYC016280.

255. Patrol Supervisors supervise several police officers assigned to certain sectors/posts on a tour and often patrol the same areas. *See generally* Grossman Dec. Exh. “L”, PG 202-17.

256. The supervisor to officer ratio can vary anywhere between 1:5 and 1:16, depending on various factors including, but not limited to, officer experience and the nature of an assignment. Giannelli Tr. at 275:9-16, 122:16-24; 8/7/09 Esposito Tr. at 124:4-11.

257. Supervisors have various opportunities to observe, monitor and supervise officer performance so that they are complying with department procedures and training. Esposito Dec. at ¶ 23.

258. For example, supervisors maintain radio contact with officers throughout a given tour. As questions arise, supervisors are able to communicate with officers and give appropriate direction. Esposito Dec. at ¶ 23.

259. Precinct commanders monitor the radio when they are out in the field. Pulaski at 318:14-319:9.

260. Precinct Commanders, out in the field, are listening to the radio for the type of interactions relating to stop, question and frisks and other activities. Pulaski at 318:14-319:9; Grossman Dec. Exh. “L”, PG 202-17 at ¶¶2, 10 and 14.

261. Sergeants are responsible for addressing issues that arise during a tour of duty and for providing guidance. Esposito Dec. at ¶ 23; Grossman Dec. Exh. "L", PG 202-17.

262. Supervisors are expected to visit various locations within a command at different times to ascertain that uniformed members of the service are performing their duties. Grossman Dec. Exh. "L", PG 202-17.

263. Supervisors are expected to maintain Activity Log/Memobook entries of the officers who they visit. Grossman Dec. Exh. "L", PG 202-17, ¶8. See, e.g. Bates No NYC00000628-29(Sergeant memobook).

264. A supervisor is also expected to visit police officers on foot and radio motor patrol frequently and at irregular intervals and sign the officer's Activity Log/Memobook. Grossman Dec. Exh. "L", PG 202-17, ¶ 12. See selected excerpts of memo book of Officer Hu. NYC\_2\_00019956, 19958-19960, 19961, 19966-19968, 19972-19974, 19976-19978, 19982, 19988, 19992-19994, 19996, 200001, 20003-20005.

265. Supervisors are expected to immediately respond to and direct activities at radio runs, visit various locations in the command to observe the patrol officers, and direct uniformed units in marked police cars (RMP units) to resume patrol when their services are no longer needed. *See e.g.*, Grossman Dec. Exh. "L", PG 202-17.

266. Supervisors are expected to respond to the scene of and approve arrests. Esposito Dec. at ¶ 23; *See generally* Grossman Dec. Exh. "L", PG 202-17.

267. Before a supervisor approves an arrest, officers are expected to explain the circumstances that give rise to the arrest to make sure there is a proper basis for the arrest. Esposito Dec. at ¶ 23; *See generally* Grossman Dec. Exh. "L", PG 202-17.

268. If the command supervisor is not available to respond to the scene of an incident to assist and supervise patrol officers, then the Patrol Guide provides that the communications section will immediately dispatch a patrol supervisor from an adjoining command to the scene. *See* Grossman Dec. Exh. “L”, PG 202-17.

269. Supervisors also have the opportunity to observe officer performance directly when supervisors and officers work together as partners and when supervisors and officers engage in team led enforcement. Esposito Dec. at ¶ 23.

270. Also, Supervisors of anti-crime teams and impact teams lead police officers in small groups enabling them to work with them, walk with them and continue to train and advise them.. *See* Giannelli Tr. at 121:18-122:15, 275:9-16.

#### Paperwork

271. Supervisors are required to sign and approve various forms, including a UF250 form, arrest paperwork, summonses and monthly officer activity sheets. Esposito Dec. at ¶ 24; *See* PG § 20217, ¶20; *See* Grossman Dec. Exh. “G”, PG 212-11 “Stop and Frisk,” at NYC-00005421-423; Esposito Tr. at 353:2-15 (A supervisor must sign off on every stop, question and frisk UF 250 report.); *see e.g.*, monthly officer activity sheets at NYC-00008320–NYC-00008331, NYC\_2\_00015909–NYC\_2\_00015976; 11/5/09 Guimaraes Tr. 102:23-103:11, 104:3-104:15, 108:9-109:9; (stating that Lt. Guimaraes monitors his subordinates’ compliance with NYPD stop, question, and frisk policies by reviewing activity reports, a recapitulation of the activity reports, the Stop Question and Frisk, that a supervisor receives the forms and makes sure the forms are filled out); 11/10/2009 Diaz Tr. 130:10-17; 130:18-133:8; (Diaz testified that the desk officer reviews the UF-250 for completeness. If he feels it is necessary, there may be occasion when the desk officer has the police officer articulate the circumstances that let to a

stop with more detail than what appeared on the form.); 3/12/2010 Ortiz Tr. 77:13-79:11 (Ortiz testified that he reviews the monthly activity reports to ensure that the forms are properly filled out and that whatever activity officers generate is indicated on the sheet which captures information relating to arrests, c-summonses and UF250s.); 7/22/09 Hegney Tr. at 145:6-20, 155:6-155:14; 6/27/09 Agron Tr. at 146:18-147:12

272. In the NYPD's view, through a review of the paperwork, supervisors can assess an officer's attention to detail, comprehension of legal concepts and whether there is a need for further instruction and training or closer supervision. Esposito Dec. at ¶ 24. *See* Grossman Dec. Exh. "L", PG 202-17; *see also* Grossman Dec. Exh. "G", PG 212-11.

#### UF 250 Paperwork

273. If a sergeant learns about an encounter that resulted in a stop via the NYPD radio, then the sergeant may be able determine whether an officer completed the UF250 form. Deposition of Phil Pulaski, November 17, 2009, ("Pulaski Tr.") at 316:3-22.

274. If a sergeant learns about a stop through the radio, supervisors have an opportunity to compare descriptions of suspects or a person of interest that comes over the police radio with UF 250 forms that are completed by police officers in order to observe whether officers are in fact filling out the forms properly. 8/7/09 Esposito Tr. at 85:22-86:16.

275. The supervisor also reviews other documents generated along with the UF250, like the arrest paperwork (if any) and other documents related to the incident (if they exist) that the officer has completed. 11/23/09 Esposito Tr. at 265:10-21.

#### Memobooks

276. Supervisors sign off on their subordinate officers' memo books for certain tours that the officer performs. Pulaski Tr. at 361:3-11; Giannelli Tr. at 182:9-15 (supervisors

“usually” sign off on their subordinate officers’ memo books”); Pulaski Tr. 361:3-11 (“for the most part,” the supervisors sign and review the memo books of officers during each tour); Dang Dep. Tr. 101:23-102:7; Marino Dep. Tr. at 61:9-61:21; Gonzalez Dep. Tr. at 70:7-10.

277. Ideally, when an officer prepares a UF250, he or she is expected to complete a UF250 and complete an entry in his or her memo book. 8/7/09 Esposito Tr. at 130:22-131:19.

278. Not all police officers carry memo books (also known as activity logs) with them when they are out in the field. Giannelli Tr. at 166:19-167:10.

279. For example, detectives in the narcotics division complete Daily Activity Reports rather than complete their memo books on a daily basis. Giannelli Tr. at 166:19-167:10.

280. Supervisors are familiar enough with the officers they supervise to decide how much to review an officer’s memo book entries. 11/23/09 Esposito Tr. at 284:11-20.

#### Performance Evaluations

281. Supervisors prepare monthly, quarterly and yearly officer evaluations. *See* Esposito at 321:25 – 322:11. *See e.g.*, NYC-00008320 – NYC-00008331, NYC\_2\_00015909 – NYC\_2\_00015976.

282. Supervisors are also reviewed on an annual basis. Giannelli Tr. at 218:10-219:3.

283. Supervisors review police officers’ monthly performance reports and provide them to the commanding officer of his or her command. *See* PG 202-17, 202-18, 202-19 and 202-20; *see e.g.*, NYC-00008320 – NYC-00008331, NYC\_2\_00015909 – NYC\_2\_00015976.

284. Supervisors review police officer monthly activity reports, including the number of summonses issued and stop, question and frisks completed, to check that the officer is performing properly. 8/7/09 Esposito Tr. at 87:18-88:3.

285. If a supervisor has a question about an officer's monthly activity report, a supervisor may investigate by questioning the officer directly and/or comparing the officer's activity report with his or her assignments. 8/7/09 Esposito Tr. at 88:8-24.

286. For example, if a police officer's monthly activity report states that he or she has completed zero UF250s in one month, this may be an indicator that the officer is neglecting to fill out required UF250s. 8/7/09 Esposito Tr. at 90:4-14.

287. If a supervisor Rater and/or Reviewer concludes that an individual should receive additional training to raise his or her level of performance, this may be included in his or her evaluation and any recommendation for additional training should specify the area of need. *See* "Performance Evaluation Guide: Sergeant," bates stamped NYC016201-NYC016280.

288. The Rater is expected to follow-up to so that arrangements are made for additional training. *See* "Performance Evaluation Guide: Sergeant," bates stamped NYC016201-NYC016280.

289. The yearly evaluation assesses an officer's performance and informs NYPD whether he or she is operating under constitutional guidelines. 11/23/09 Esposito Tr. at 322:12-324:4.

290. If problems or irregularities in an officer's stop, question, and frisk activity are noted in connection with civilian complaints, then the officer's future activity may be monitored. 8/7/09 Esposito Tr. at 126:17-128:4.

291. Supervisors evaluate officers based on their personal observations. 8/7/09 Esposito Tr. at 61:5-23.

Investigations

292. The NYPD monitors supervisors through inspections teams, integrity control officers and the precinct commanding officers so that supervisors are in fact observing officer conduct in the field. 8/7/09 Esposito Tr. at 96:1-21.

293. Inspection teams and the Internal Affairs Bureau are among the NYPD units, which investigate police personnel. 8/7/09 Esposito Tr. at 96:1-21.

Integrity Control Officers

294. There is an Integrity Control Officer (“ICO”) in each police precinct. Giannelli at 47:1-10. Grossman Dec. Exh. “D”, PG 202-15 “Duties and Responsibilities” of a Command Integrity Control Officer Bates No. NYC\_2\_00011842-43.

295. A precinct’s ICO periodically reviews police officers’ paperwork, including UF250 forms. Esposito Tr. at 353:2-15; Giannelli Tr. at 48:18-49:3. Integrity Control Officers (“ICO”) also review supervising sergeants’ memo book entries. PG 202-15, “Duties and Responsibilities” of an Integrity Control Officer at Bates No. NYC\_2\_00011842-43.

296. In addition to conducting self-inspections, ICO duties and responsibilities include investigations, personnel history (“CPI”) checks when new members are assigned to the command, inspecting and signing sergeant activity logs. Grossman Dec. Exh. “D”, PG 202-15 “Command Integrity Control Officer” at ¶¶ 9, 12, 13, 16, 31 at Bates No. NYC\_2\_00011842-43.

297. The ICO’s also identify potential misconduct by police officers in the precinct. Giannelli Tr. at 47:1-19.

Borough Inspection Team

298. A borough inspection team also investigates complaints it receives alleging police misconduct. 8/7/09 Esposito Tr. at 69:10-13, 69:18-21; 70:3-71:5. See, generally, PG 202-01 “Borough Commander” Duties and Responsibilities at NYC\_2\_00008203.

299. A borough inspection team is a unit within each borough whose responsibilities include observing police officers making stops and arrests in the field. 8/7/09 Esposito Tr. at 69:10; 70:3-71:5 (“They sit, they will sit in a location far enough away and observe the officer’s conduct, maybe his or her response to a radio run, which may involve a stop, question and frisk.”).

300. Officers testified that NYPD prohibits racial profiling. See Joyce Tr. at 50:17-51:2 (“there is no racial profiling”); Hegney Tr. at 214:12-215:14 (“That racial profiling is not tolerated.”); Gonzalez Tr. at 115:21-117:14 (“I know that it’s not allowed.”); Diaz Tr. at 57:12-58:16 (“[I]n our training for stop, question and frisk, where we stress that you need reasonable suspicion to conduct a stop...you can’t base that arrest or stop based on issues of race, religion or ethnic background.”).

301. Officers testified that their supervisors reaffirmed or refreshed department directives prohibiting racial profiling. See Gonzalez Tr. at 37:3-16; 39:5-13; Hu Tr. at 79:21-80:16, 81:14-83:18; Marrero Tr. at 102:18-103:16; Moran Tr. at 49:13-20; Diaz Tr. at 57:12-58:16. Officers testified that roll call training has addressed the prohibition on racial profiling. See Herran Tr. at 19:2-22; Pichardo Tr. at 95:11-97:7; Pillai-Abdul Tr. at 28:5-11; Bennet Tr. at 104:2-17. Officers recalled that field training or other post-Academy training included lessons on racial profiling. See Dang Tr. at 121:10-123:10; Eddy Tr. at 202:13-209:24.

302. The prohibition on racial profiling is communicated directly and through NYPD’s emphasis on having reasonable suspicion for stops. See Telford Tr. at 85:9-86:23



(“Without using those words ‘racial profiling,’ it’s reinforced that your stops should, number one, be based on reasonable suspicion.”); Guimaraes Tr. at 26:15-27:7. Supervisors personally ensured officers under their supervision did not engage in racial profiling. *See* Telford Tr. at 88:2-22 (“Number one, I’m out there with them.”).

303. Officers are able to articulate the prohibition against racial profiling policy in their own words. *See* Joyce Tr. at 50:17-51:18 (“[R]acial profiling, to me, is stopping someone based on their race, skin color, religious beliefs.”); Hegney Tr. at 214:12-215:14 (defining profiling as “[s]topping people or initiating some sort of frisk based on their color, race [or] ethnicity.”); Moran Tr. at 48:3-49:6 (“We learned that you should not judge somebody on ethnicity, color of skin, language that they speak.”), 191:21-192:6; Dang Tr. at 121:10-123:10; Pillai-Abdul Tr. at 26:25-27:10; Hernandez Tr. at 43:6-10 (racial profiling is “[t]o presume that a person did a crime because of their race, religion or beliefs or color.”); Salmeron Tr. at 56:25-57:23 (profiling explained as “targeting someone based on their race, religion or color”).

#### Complaints Generally

304. Complaints of alleged misconduct (“complaints”) against members of the NYPD may be made by any source, including members of the public, the media, supervisors, or by members of the service. Declaration of Julie L. Schwartz (“Schwartz Dec.”) at ¶ 2.

305. Complaints may be made (i) to the Civilian Complaint Review Board (“CCRB”), (ii) to the NYPD, (iii) or to 311 through any means of communication, including in-person, by phone, mail or by e-mail. Schwartz Dec. at ¶ 3.

306. All complaints, even those made anonymously, are referred to an office for investigation. Schwartz Dec. at ¶ 4.

307. NYPD refers complaints it receives alleging excessive force, abuse of authority, discourtesy, or offensive language (known as “FADO” complaints) to the CCRB. PG 207-31, Bates No. NYC00008101.

308. The NYPD Internal Affairs Bureau (“IAB”) is notified of all complaints that are referred to the CCRB. PG 207-31, Bates No. NYC00008101.

309. Complaints that do not fall within the jurisdiction of either IAB or CCRB are forwarded to the Investigative Review Section of the Office of the Chief of Department (“OCD”). Schwartz Dec. at ¶ 21; Deposition of Julie Schwartz, Aug. 27, 2009 (“Schwartz Tr.”) at 96:22-97:11; CCRB Training Manual, Bates No. NYC\_2\_00007773.

310. Deputy Commissioner Julie Schwartz, Department Advocates Office, testified pursuant to Fed.R.Civ.P. 30(b)(6) on the following topics: (1) Office of the Chief of Department Investigations and Dispositions of civilian complaints against NYPD officers; (2) NYPD investigations and dispositions of substantiated CCRB complaints against NYPD officers for illegal or otherwise improper stops and frisks; (3) charges against NYPD officers for illegal or otherwise improper stops and frisks; and (4) discipline of NYPD officers for illegal or otherwise improper stops and frisks. Schwartz Tr. at 104:8-14.

311. With respect to the fourth topic for which the Fed.R.Civ.P. 30(b)(6) notice issued, Commissioner Schwartz testified that she could not testify about how sergeants handle discipline for complaints of improper, stop, question and frisks at the command level unless that discipline came through her office. Schwartz Tr. at 46:25-49:6. However, she was able to testify that the options available to supervising officers at the command level who have reason to believe that an officer conducted an unreasonable, stop, question and frisk include training,

reporting misconduct to internal affairs, or showing the officer how to do it correctly. Schwartz Tr. 51:14-53:12.

Civilian Complaint Review Board

312. The New York City Charter (“the Charter”) created the CCRB in 1966. N.Y. CITY CHARTER, ch. 18-A, § 440.

313. The CCRB became an all-civilian agency in 1993. N.Y. CITY CHARTER, ch. 18-A, § 440(b)(1)-(2).

314. The Charter vested authority in the CCRB to investigate, make findings, and recommend actions “upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.” N.Y. CITY CHARTER, ch. 18-A, § 440(c)(1).

315. When a complaint is referred to OCD by CCRB because it is not a FADO offense, and also not corruption or serious misconduct, two members of team management must review the case and indicate the reasons for the referral. CCRB Training Manual, Bates No. NYC\_2\_00007774.

316. The team manager or supervisor must also write a memorandum explaining why the case is being referred to OCD when forwarding the case to the Case Closing Unit for referral. CCRB Training Manual, Bates No. NYC\_2\_00007774.

317. Search and seizure allegations relating to stop, question, and frisk fall under the CCRB’s abuse of authority jurisdiction. CCRB Training Manual, Bates No. NYC\_2\_00007777.

318. The Department Advocate's Office ("DAO") maintains an on-site presence to assist CCRB investigations by providing NYPD documents, answering general questions regarding NYPD procedures and coordinating investigator training. Schwartz Dec. at ¶ 5; Schwartz 2009 CC Testimony, Bates No. NYC\_2\_00007320.

319. This is done through a Liaison Unit, which is staffed by a lieutenant, a sergeant, and two police officers who are assigned full time to the CCRB Office. Schwartz Dec. at ¶ 5; Schwartz 2009 CC Testimony, Bates No. NYC\_2\_00007320.

320. When cases are received by the CCRB, they are assigned to a team. Deposition of Joan Thompson, Aug. 28, 2009 ("Thompson Tr.") at 36:23-37:7.

321. Teams include a manager, supervisor, two assistant supervisors and investigators. Thompson Tr. at 37:12-15.

322. The team manager assigns complaints to investigators based on the difficulty of the case and the experience of the investigator. Thompson Tr. at 37:16-38:18.

323. CCRB investigators receive six weeks of training conducted by CCRB attorneys, the First Deputy, and the Director of Mediation. Thompson Tr. at 54:24-56:2.

324. CCRB investigators also undergo training from the NYPD, including lectures, a community academy, a ride-along with a police officer, and a trip to the firing range. Thompson Tr. at 56:25-58:10.

325. In the normal course, the CCRB will conduct an investigation of a complaint by interviewing the persons who have knowledge of the incident, including but not necessarily limited to the complaining party. Thompson Tr. at 41:16-42:5.

326. CCRB investigators will also interview the officers involved or present at the scene, unless the complainant is unavailable or uncooperative. Thompson Tr. at 42:14; 46:22-47:13.

327. CCRB investigators review documents relevant to the incident, including memo book entries. Thompson Tr. at 42:5-18.

328. Additionally, CCRB investigators may take any other investigative step deemed reasonable. New York City Civilian Complaint Review Board, *The Investigative Process*, available at <http://www.nyc.gov/html/ccrb/html/how.html>.

329. There are four possible outcomes for cases that are received by the CCRB: (i) “substantiated” where there is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and committed misconduct; (ii) “exonerated” where the subject officer was found to have committed the act alleged, but the subject officer’s actions were determined to be lawful and proper; (iii) “unfounded” where there is sufficient credible evidence to believe that the subject officer did not commit the alleged act of misconduct; and (iv) “unsubstantiated” where the weight of the available evidence is insufficient to substantiate, exonerate or unfound the allegation. New York City Civilian Complaint Review Board, *The Investigative Process*, available at <http://www.nyc.gov/html/ccrb/html/how.html>.

330. Once an investigator has made a recommendation as to the outcome of a case, a team supervisor and manager will review the recommendation and case file. Thompson Tr. at 65:1-18.

331. If a manager concurs with an investigator’s recommendation for substantiation, the complaint is sent to a CCRB attorney for further review. Thompson Tr. at 65:25-67:8.

332. When the investigation is complete, the case is forwarded to the Civilian Complaint Review Board. Thompson Tr. at 67:25-68:6.

333. A panel of three members of the CCRB will read the case, review all of the evidence, and vote on the disposition of every allegation raised by the complaint. Thompson Tr. at 69:25-70:9; New York City Civilian Complaint Review Board, The Investigative Process, *available at* <http://www.nyc.gov/html/ccrb/html/how.html>.

334. When the CCRB substantiates a complaint, it forwards the case to the NYPD. Schwartz Dec. at ¶ 6.

335. In most instances, the CCRB will also forward a recommendation for disciplinary action at one of three levels: Instructions, Command Discipline or Charges and Specifications. Schwartz Dec. at ¶ 6

336. The DAO then conducts a review of the case file, officer's CCRB history and disciplinary history, the evaluation and recommendation by the officer's commanding officer, and examines other similar cases. Schwartz Dec. at ¶ 7; Schwartz 2009 CC Testimony, Bates No. NYC\_2\_00007321.

337. After reviewing substantiated complaints, the Deputy Commissioner of the Department Advocate's Office normally recommend one of the following options: Instructions for the officer, imposition of a Command Discipline, service of Charges and Specifications, or that the NYPD is unable to prosecute. Schwartz Dec. at ¶ 8; Schwartz 2009 CC Testimony, Bates No. NYC\_2\_00007321.

338. That recommendation is forwarded to the First Deputy Commissioner and ultimately to the Police Commissioner for his final determination, in the exercise of his exclusive

discretion over the discipline of the Police Department pursuant to the New York City Charter. Schwartz Dec. at ¶ 8; Schwartz 2009 CC Testimony, Bates No. NYC\_2\_00007321.

339. Prior to 2005, the DAO preferred charges against a higher percentage of officers against whom the CCRB had substantiated complaints, but a large proportion of these charges were dismissed because the Department Advocate did not believe it could prove charges by a preponderance of the evidence. Schwartz Dec. at ¶ 9; Schwartz Tr. at 248:17-25.

340. Since 2005, the DAO in its view has conducted a more thorough up-front analysis of substantiated cases. Schwartz Dec. at ¶ 9.

341. In the DAO's view, this analysis has resulted in stronger cases, with more appropriate discipline. Schwartz Dec. at ¶ 9.

342. Therefore, charges are preferred against members of the service for substantiated CCRB complaints in fewer cases, but it also means that fewer cases are dismissed after filing. Schwartz Dec. at ¶ 9.

343. The CCRB is authorized by law to mediate claims by civilians through informal conciliation. N.Y. CITY CHARTER, ch. 18-A, § 440(c)(4).

344. Mediation is limited to those cases where there is no injury to property, and where there is no arrest. NYC\_2\_00007690.

345. Most mediations are mostly verbal disputes and street stops that did not lead to an arrest or summons. CCRB Report 2008 – Mediation, NYC\_2\_00007690.

346. The NYPD has worked closely with the CCRB to encourage members of the service to take part in mediation of complaints. Schwartz Dec. at ¶ 10.

347. In the last two years, as a result of these efforts, for complaints that were eligible for mediation, there has been an eighty-two percent acceptance rate for CCRB mediation. Schwartz Dec. at ¶ 10.

348. The CCRB has the largest voluntary mediation program for complaints against police in the country. CCRB Report 2008 – Mediation; NYC\_2\_00007690.

349. The CCRB has found that satisfaction among those who have gone through mediation is high. CCRB Report 2008 – Mediation; NYC\_2\_00007690.

350. Marcos Soler, the CCRB’s director of strategic initiatives, presented a paper in June 2008 studying the rate at which officers who agree to mediate cases receive follow-up complaints. CCRB Report 2008 – Mediation, NYC\_2\_00007690.

351. The CCRB’s research shows that officers who participate in mediation are less likely to receive complaints in the future. CCRB Report 2008 – Mediation, NYC\_2\_00007690.

352. The Department maintains a CCRB Profile and Assessment Committee, which monitors members of the service who have accumulated an inordinate number of civilian complaints. Grossman Dec. Exh. “N”, NYPD Supervisor’s Guide — Monitoring and Assistance Programs, Bates No. NYC\_2\_00006358; Schwartz Tr. 56:9-15; 60:21-61:2; 61:11-62:18; 64:4-21.

353. Screening for the inclusion in CCRB Profile and Assessment Program takes place after a member accumulates six or more CCRB complaints in the past five years; two or more substantiated CCRB complaints in the part five years; or three or more CCRB complaints in the last twelve months. Grossman Dec. Exh. “N”, NYPD Supervisor’s Guide —



Monitoring and Assistance Programs, Bates No. NYC\_2\_00006358; *see* Schwartz Tr. 56:9-15; 60:21-61:2; 61:11-62:18; 64:4-21.

NYPD Internal Affairs Bureau (“IAB”)

354. The Internal Affairs Bureau (“IAB”) investigates allegations of corruption and serious misconduct against members of the service. Schwartz Dec. at ¶ 11; Schwartz Tr. 102:17-20.

355. Approximately one thousand (1,000) officers are assigned to IAB and the disciplinary process. Schwartz Dec. at ¶13.

356. In addition to the central Internal Affairs Bureau, each Patrol Borough or Department Bureau has an Investigations Unit. Schwartz Dec. at ¶ 14.

357. The Patrol Borough and Department Bureau Investigations Units are responsible for conducting investigations of misconduct. Schwartz Dec. at ¶ 14; 8/7/09 Esposito Tr. at 69:10-13, 69:18-21; 70:3-71:5; *see, generally*, PG 202-01 “Borough Commander” Duties and Responsibilities at NYC\_2\_00008203.

358. Some cases at the Patrol Borough or Department Bureau Investigations Unit are reviewed by IAB. Schwartz Dec. at ¶ 14.

359. Investigators assigned to IAB, as well as those assigned to Bureau and Borough Investigations Units and Precinct Integrity Control Officers attend training conducted by the IAB’s Office of Professional Development (“OPD”). Schwartz Dec. at ¶ 15.

360. OPD is comprised of two sub-units, the Training Section and the Educational Resource Section. Schwartz Dec. at ¶ 16.

361. The IAB’s OPD curriculum is accredited by the N.Y.S. Board of Regents and the National Program of Non-Collegiate Sponsored Institutions. Schwartz Dec. at ¶ 17.

362. The IAB's OPD curriculum is recognized both nationally and internationally. Schwartz Dec. at ¶ 17.

363. The curriculum addresses how to conduct investigations. Schwartz Dec. at ¶ 17.

364. At the Police Academy, each class receives training in their responsibilities, including how to conduct themselves professionally at all times. Schwartz Dec. at ¶ 18.

365. The Chief of the Internal Affairs Bureau also personally conducts training sessions attended by every recruit at each the Police Academy class. Schwartz Dec. at ¶ 18.

366. IAB receives three different types of cases in the normal course of business: "C," "M," and "OG". Schwartz Dec. at ¶ 12.

367. "C" category cases, involve corruption or serious misconduct and are retained by IAB for investigation. Schwartz Dec. at ¶ 12.

368. "M" category cases involve misconduct that does not rise to the level of serious misconduct, and are typically investigated by local Investigations Unit within Bureau or Borough Command. Schwartz Dec. at ¶ 12.

369. "OG" (outside guideline) category cases are minor violations of Department rules or procedures, and are typically referred to the officer's commander for investigation. Schwartz Dec. at ¶ 12.

370. The IAB Steering Committee reviews cases being investigated by the Internal Affairs Bureau. Schwartz Dec. at ¶ 19.

371. The Steering Committee is made up of the Chief of IAB, IAB executive staff, the Executive Director of the Commission to Combat Police Corruption, and occasionally District Attorneys. Schwartz Dec. at ¶ 19.

372. IAB executives use the Steering Committee process to review cases, to see that cases are being investigated properly and effectively, to see that knowledge is shared, alternative investigative paths are explored, and resources are assigned as necessary. Schwartz Dec. at ¶ 20.

NYPD Office of the Chief of Department (“OCD”)

373. When OCD receives a complaint, it logs the complaint in a central database, and then sends it out to the commanding officer of the bureau in which that officer currently works for investigation. Schwartz Dec. at ¶ 22; Schwartz Tr. at 100:1-22; Deposition of Helen McAleer, Nov. 19, 2009 (“McAleer Tr.”) at 75:4-76:17.

374. When OCD sends complaints to commands for investigation, if the investigation reveals that the conduct at issue requires disciplinary action, a variety of options is available including verbal admonishment and Instructions to Command Discipline and Charges and Specifications. *See* Schwartz Dec. at ¶ 22, 24-26.

NYPD Use of “Progressive Discipline”

375. The NYPD engages in progressive discipline, which is a process of using increasingly severe steps or measures to deal with substandard work behavior and/or misconduct. Schwartz Dec. at ¶ 39.

376. Progressive discipline features the use of increasingly formal efforts to provide feedback to an employee so that he or she can correct a problem, with the goal of improving employee performance. Schwartz Dec. at ¶ 39.

377. Progressive discipline takes into account an officer's prior disciplinary and employment history in fashioning the appropriate remedy or penalty for misconduct. Schwartz Dec. at ¶ 40.

378. However, there are exceptions to the progressive discipline approach in some cases involving serious misconduct, or corruption. Schwartz Dec. at ¶ 41.

379. There are circumstances where the concept of progressive discipline is not used. Schwartz Dec. at ¶ 42.

380. Progressive discipline is not applicable to misconduct that is characterized as a "zero tolerance" offenses. Schwartz Dec. at ¶ 41.

381. Zero tolerance offenses include (a) the use of illegal drugs, (b) making false official statements absent exceptional circumstances, and (c) operating a motor vehicle under the influence of alcohol causing serious physical injury. Schwartz Dec. at ¶ 41.

382. Progressive discipline is also not used where there has been a commission of a felony or misdemeanor involving moral turpitude. See N.Y. Pub. Officers Law § 30(1)(e). Schwartz Dec. at ¶ 42.

383. Progressive discipline is not used where there has been a misdemeanor crime of domestic violence, see 18 U.S.C. 922(g). Schwartz Dec. at ¶ 42.

384. Progressive discipline is also not used in the case of entry level probationary officers or officers placed on "dismissal probation," who may be terminated without a hearing. Schwartz Dec. at ¶ 42.

385. The Department may impose various disciplinary options, ranging from verbal admonishment and Instructions to Command Discipline and Charges and Specifications. Schwartz Dec. at ¶ 24.

386. A member of service who commits a minor infraction of Department Rules and Procedures may receive a verbal admonition. Schwartz Dec. at ¶ 25.

387. Instructions may be used in situations where a member of the service has committed misconduct, however the member acted in good faith and the error was not egregious. Schwartz Dec. at ¶ 26.

388. In cases when Instructions are given, they often involve mistakes or misinterpretations of the law rather than intentional misconduct, and are usually addressed by training and direction from commanders or other appropriate units including the Police Academy or the Legal Bureau. Schwartz Dec. at ¶ 27.

389. In NYPD's view, the use of Instructions may be appropriate in an area such as stop, question and frisk encounters, where officers are asked to apply laws under circumstances that may require the officer to make decisions regarding reasonable suspicion and officer safety in a matter of seconds. Schwartz Dec. at ¶ 28.

390. When the Department Advocate's Office recommends a disposition of Instructions, they follow through to so that the member of the service receives the directed Instructions. Schwartz Dec. at ¶ 29; Schwartz Tr. at 185:12-186:4; 186:23-187:13.

391. Police officers who receive Instructions in a particular subject matter generally are not the subject of further complaints in the same area. Schwartz Dec. at ¶ 29; Schwartz Tr. at 160:19- 161:9.

392. From January 1, 2007 to October 31, 2010, there were 1037 officers with substantiated CCRB allegations. Schwartz Dec. at ¶ 30.

393. Only two members of the service received subsequent complaints for the same misconduct having previously received Instructions on that substantiated misconduct. Schwartz Dec. at ¶ 30.

394. After an officer has received Instructions in a particular subject matter they will not be again eligible for Instructions should that misconduct reoccur. Schwartz Dec. at ¶ 31; Schwartz Tr. at 160:19-161:4.

395. An officer who has committed the same misconduct after receiving Instructions may then be subject to discipline. Schwartz Dec. at ¶ 31; Schwartz Tr. at 160:19-161:4.

396. A “Command Discipline” is discipline that is handled at the command level of supervision. Schwartz Dec. at ¶ 32.

397. Command Discipline is available to a commanding officer or executive officer to correct deficiencies, and may stem from multiple minor violations or as a result of a single incident of misconduct. Schwartz Dec. at ¶ 32.

398. The penalties for Command Discipline range from a verbal admonishment to the loss of ten vacation days. Schwartz Dec. at ¶ 32.

#### Formal Discipline – Charges and Specifications

399. Formal discipline is initiated by the service of Charges and Specifications on an officer. Schwartz Dec. at ¶ 33.

400. Charges and Specifications carry potential for the most serious penalties an officer may receive, including termination. Schwartz Dec. at ¶ 33.

401. The Department Advocate’s Office receives substantiated cases from the CCRB, IAB, the Office of Equal Employment Opportunity, from Investigations Units and

occasionally directly from integrity control officers in commands or the Department of Investigation. Schwartz Dec. at ¶ 23; Schwartz Tr. at 24:23-25:17, 25:25-26:22.

402. The penalties for Charges and Specifications include termination or forfeiture of up to 30 vacation days or suspension days per offense. N.Y.C. Admin. Code § 14-115(a).

403. Upon having found a member of the force guilty, the commissioner or his designee may suspend judgment and instead offer a period of dismissal probation, not to exceed one year, during which an officer may be terminated without a hearing if the officer commits an additional act of misconduct. N.Y.C. Admin. Code § 14-115(d).

404. A member of the service may be given the opportunity to negotiate a plea before the Deputy Commissioner of Trials. Schwartz Dec. at ¶ 34.

405. A member of the service may accept a negotiated plea, though it requires Police Commissioner approval. N.Y.C. Admin. Code §§ 14-115(a), (d).

406. If the Department Advocate's Office chooses not to offer a plea, or a member of the service rejects a plea offered by the Department Advocate's Office, the member of the service will be entitled to a hearing. Schwartz Dec. at ¶ 35.

407. At trial, the Department Advocate has the burden of proving the charges by a preponderance of the evidence. Schwartz Dec. at ¶ 35.

408. After trial, the Deputy Commissioner of Trials prepares a written report of his or her findings for the Police Commissioner called a "Report and Recommendation." Schwartz Dec. at ¶ 36.

409. The report includes a finding of guilty or not guilty for each specification, and a penalty recommendation if the officer is found guilty of any charge. Schwartz Dec. at ¶ 37.

410. The Police Commissioner makes the final determination as to both guilt and penalty. Schwartz Dec. at ¶ 38.

Performance Monitoring

411. Although the 30(b)(6) notice did not specifically identify monitoring as a topic, Deputy Commissioner Schwartz was able to testify based on her personal knowledge about the existence of the CCRB Profiling Assessment Committee, of which she is a member and which operates out of the Office of the First Deputy Commissioner. Schwartz Tr. 60:1-20.

412. The Committee monitors officers who have had certain numbers of CCRB complaints, which can include complaints to CCRB about improper stop, question and frisk encounters. Schwartz Tr. at 56:9-15.

413. Commissioner Schwartz's office receives data from CCRB regarding officers and forwards it to the Committee. Schwartz Tr. at 60:21-61:2; 61:11-62:18; 64:4-21.

414. The Committee does not discipline officers who are monitored, although they can require retraining and transferring. Schwartz Tr. at 59:4-15.

415. The Department maintains a "Central Personnel Index," or "CPI", which is a central repository of information from various administrative, disciplinary, and investigative units throughout the Department, including for example, complaint allegations, substantiated allegations, firearms discharges, disciplinary history, poor evaluations, placement in monitoring and excessive sick time. Schwartz Dec. at ¶ 47.

416. Every IAB complaint, whether substantiated or not, should be recorded in a member's CPI. Schwartz Dec. at ¶ 48; Schwartz Tr. at 106:20-107:14.



417. The information in the CPI is used throughout an officer's career to help make decisions about assignments, transfers, promotions, positions of special trust, performance monitoring, and other administrative actions. Schwartz Dec. at ¶ 49.

418. The Department employs numerous monitoring programs for uniform and civilian members of the service in order to heighten the scrutiny and supervision of probationary and permanent members who have engaged in conduct that raises questions concerning the acceptability of their performance or behavior. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006340.

419. The Performance Monitoring Unit is responsible for identifying and monitoring members of the service whose behavior and/or performance is substandard. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

420. Commanding officers are responsible for overseeing that individual members receive appropriate guidance and supervision and that all behavior is appropriately documented. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006340.

421. Screening by the Performance Monitoring Unit is the primary method used to identify members for placement into a monitoring program. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

422. Screening is conducted when an officer exceeds a threshold number of CPI entries, receives a negative evaluation, is administratively transferred, or receives a disciplinary penalty of over ten days' loss of pay or vacation. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

423. Level I Monitoring by the Performance Monitoring Unit tracks those members of the service with three or more CCRB complaints in one year; six or more CCRB complaints in the past five years; four or more force complaints in the last two years; five or more force complaints in the last four years; negative performance evaluations (overall or in specific areas or dimensions); referral by a commanding officer or ICO; suspension or modified assignment; administrative transfer. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

424. Level I Monitoring lasts for 12 months and Members of the service are evaluated in the tenth month of monitoring to assess the need for placement in Level II or Level III monitoring. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006347.

425. Level II Monitoring tracks those who have been found guilty of one set of Charges and Specifications for force within the last five years; two or more substantiated force, abuse, discourtesy, or offensive language complaints within a four year period; serious misconduct resulting in disciplinary penalty of twenty days or more (five years from date of incident); or two below standard performance evaluations in a three year period; performance and or behavior that remains substandard even after Level I Monitoring; determination by the Performance Monitoring Unit and/or commanding officer that Level I Monitoring will not improve the members behavior; at direction of First Dep. or Chief of Personnel; or upon the recommendation by Borough Commander or Chief of Personnel. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

426. Level II Monitoring lasts for approximately eighteen months. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006348.

427. In Level II Monitoring, the member of the service is interviewed by the commanding officer of the Performance Analysis Section and, when necessary, by the Borough Commander. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006348. Commanding officers of officers in Level II monitoring must produce quarterly Performance Profiles, tracking both positive and negative behavior. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006348.

428. Level III Monitoring tracks those members of the service who have consistent negative performance or evaluations; members who have failed to respond to positive reinforcement or discipline; at the direction of the Special Monitoring Committee (composed of the First Deputy Commissioner, the Chief of Personnel, and the Chief of IAB); one year in Level II without improvement; upon the recommendation of a member's commanding officer or Borough Commander and approval by the Special Monitoring Committee; or for those on dismissal probation. Grossman Dec. Exh "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006346.

429. Level III Monitoring is for a minimum of 24 months. NYPD Supervisor's Guide – Monitoring and Assistance Programs and only the Special Monitoring Committee may remove members from the Level III Special Monitoring. Grossman Dec. Exh. "N", NYPD Supervisor's Guide – Monitoring and Assistance Programs, NYC\_2\_00006348-49.

430. Members in Level III Monitoring are interviewed by the commanding officer of the Performance Analysis Section and reviewed monthly by their commanding officer. Grossman Dec. Exh “N”, NYPD Supervisor’s Guide – Monitoring and Assistance Programs, NYC\_2\_00006349. These members are prohibited from being assigned to the first platoon, and must be reviewed by Career Advancement Review Board prior to promotion. Grossman Dec. Exh “N”, NYPD Supervisor’s Guide – Monitoring and Assistance Programs, NYC\_2\_00006349.

431. The Uniform Probationary Monitoring Unit is responsible for monitoring the performance of all entry-level police officers and all members of the service promoted to the rank of sergeant, lieutenant and captain, while on probation. Schwartz Dec. at ¶ 43.

432. Newly hired police officers receive performance evaluations at their fourth, tenth, sixteenth, and twenty-second months of employment. Schwartz Dec. at ¶ 44.

433. In addition to their annual evaluations, newly promoted officers receive probationary performance evaluations at months four, ten, and sixteen following promotion to the rank of sergeant, lieutenant, or captain. Schwartz Dec. at ¶ 44.

434. These probationary employees undergo three levels of successively serious probationary monitoring based on the ratings in their performance evaluations or on a referral by the officer’s commanding officer. Schwartz Dec. at ¶ 45.

435. The DAO will inform the Uniform Probationary Monitoring Unit of any complaints against probationary officers. Schwartz Dec. at ¶ 46.

436. A referral by the DAO may result in an extended probationary period, a loss of the probationary rank, or termination. Schwartz Dec. at ¶ 46.

437. An officer's disciplinary history, including all CPI entries and placement in performance monitoring program, may impact an officer's advancement and promotional opportunities within the Department. Schwartz Dec. at ¶ 50.

The February 2008 Incident Alleged by Floyd – Officers Identified

438. Floyd testified that while walking on the path adjacent to the house in which he lived 1359 Beach Avenue, he met the basement tenant, a black male, who told him that he was locked out and asked for help; Floyd testified that he told the tenant that he would get the key from upstairs. 4/30/09 Floyd Tr. at 175:4– 176:17.

439. Floyd testified that he went inside the house and retrieved from seven to ten spare keys, some on chains and some loose, which he carried in his hand as he went back outside. 4/30/09 Floyd Tr. at 178:24–180:5.

440. Floyd testified that he and the basement tenant went down to the apartment door and started trying the keys; he told the tenant that he was not sure which key it was. 4/30/09 Floyd Tr. at 181:25–182:25.

441. Floyd testified that he tried the keys at first and then it was back and forth with both he and the basement tenant trying the keys. 4/30/09 Floyd Tr. at 182; 20-23.

442. Floyd testified that they eventually found the right key but were stopped before they opened the door, probably after trying five or six keys. Floyd testified that at that point, three officers came up to them. 4/30/09 Floyd Tr. at 182:24–183:7, 183:16–24.

443. Floyd testified the door of the basement apartment is visible from the street. 4/30/2009 Floyd Tr. 173: 7-10.

444. Floyd testified that when he first noticed two of the officers, they were on his right side, in his peripheral vision, and he had his back to them. 4/30/09 Floyd Tr. at 184:5–11.

445. Floyd testified that the officers said something to effect that Floyd and the tenant were to stop what they were doing, asked them what they were doing, and frisked them. 4/30/09 Floyd Tr. at 185:16–187:7.

446. Floyd testified that the officer who frisked him reached into both of his front pockets. 4/30/09 Floyd Tr. at 189:19-190:12.

447. Floyd testified that he had his phone in his right front pocket and his keys in his left front pocket and maybe some change. 4/30/09 Floyd Tr. 188:16-189-2.

448. Floyd testified that after the officers frisked them, they were turned around to face the officers and asked: what they were doing; to produce their identification; why the basement tenant did not have identification; and whether they lived there. 4/30/09 Floyd Tr. at 190:13–17, 193:20–194:15, 195:14–197:21.

449. Floyd testified that he gave them his Louisiana driver's license and after the officer expressed that the address on the license did not match the address of the building, he handed them a bill, which he retrieved from a bag that he had with him, that had the address of the house. 4/30/09 Floyd Tr. at 195:18–196:2.

450. Floyd testified that after he showed the officers the bill, at least one officer went with the basement tenant around the back of the house to try to enter, which they did. 4/30/09 Floyd Tr. at 200:8–201:16.

451. Floyd testified that in response to Floyd's question about why they had been stopped, an officer who was waiting with him in the front of the house told him of a number of robberies in the area. 4/30/09 Floyd Tr. at 201:17–202:19.

452. Floyd testified he did not know of any gang or crime problems in the area. 4/30/2009 Floyd Tr. 178:10-12.

453. Floyd testified that he estimated he was at the door trying the keys for a minute, two at the most, but most probably only a minute, before the officers stopped them. 4/30/2009 Floyd Tr. 183:11-15.

454. Floyd testified that he would not know if the stop was based solely on race and that the officers said nothing about race. 4/30/09 Floyd Tr. at 206:9–208:4.

455. Floyd testified that before the officers left, Floyd asked for their names and badge numbers and they gave them to him. 4/30/09 Floyd Tr. at 208:25–209:5.

456. Officer Hernandez testified that he stopped the car in the middle of Beach Avenue and the three officers were driving in and the officers exited. 08/05/2009 Hernandez Tr. 141:10-25; 153:23-155:8.

457. Officer Joyce testified that he stopped Floyd because he believed he was in the middle of committing the violent felony of burglary, saw him jostling with a doorknob, nervously looking back, and believed there had been a burglary pattern for that time of day in the neighborhood. Deposition of Cormac Joyce, dated August 25, 2009, (“Joyce Tr.”) at 126:10–128:19.

458. Officer Joyce completed a UF250 and noted that crime suspected was burglary. Joyce Tr. at 177:24–178:7; NYC 107–112.

459. Joyce testified that he did not remember whether he touched either Floyd or the basement tenant or whether he suspected either individual of having a weapon. Joyce Tr. 144:13-21.

460. Joyce further testified that the UF250 that he filled out for the stop indicated that he had put his hands on Floyd while he was up against a wall. Joyce testified that the UF250 refreshed his recollection to the extent that if that is what he checked off on the UF250 form that it was most likely that he did the acts checked off. Joyce Tr. 179:12-180:16.

461. Officer Hernandez testified that he suspected Floyd of committing a burglary because he saw two males focused on the front door very close to each other, with their hands playing with the lock; because while he was still in the vehicle he saw one of the males looked back toward the street and then focused back on the door, as if he was looking to see if anybody was looking at them; and because he knew that there had been burglaries in the 43<sup>rd</sup> Precinct. Deposition of Eric Hernandez, August 5, 2009, at 140:21-141:9; 153:8-154:2; 169:2-19.

462. Officer Hernandez testified that he did not see a bulge in the clothing of Floyd or the basement tenant that would have indicated they had a weapon on them. 8/5/2009 Hernandez Tr. 171:20121:12.

463. Officer Hernandez further testified that he patted down the basement tenant before accompanying him to the back of the house to be sure that he had nothing that could hurt him; he did not frisk Floyd and does not remember if anyone else did. Hernandez Tr. 166:13-168:25. 533. Sergeant Kelly testified that he saw two men fumbling with a lock and jostling a door, and because of the burglary pattern in the neighborhood, suspected that they were



burglarizing a house. Deposition of James Kelly, August 7, 2009, (“Kelly Tr.”) at 32:25–33:25, 37:7–15, 38:24–39:18.

464. Sergeant Kelly testified that he suspected that the bag at the men’s feet could have contained burglary tools. Kelly Tr. at 34:7-23.

465. Sergeant Kelly testified that in general he is always concerned that a person may have a weapon and that he was somewhat concerned in this incident because he believed that they may have been committing a violent crime, reasoning that if they are entering, doing a home invasion, they might have a weapon. Kelly Tr. 42:21-43:7.

466. Kelly further testified that although he could not remember whether he or another officer frisked the two men, he hoped that they were frisked for safety reasons because they were suspected of a possible violent crime. Kelly Tr. 48:21-49:18.

467. Sergeant Kelly did not include an entry for his stop and frisk of Floyd on February 27, 2008 in his memo book because he did fill out the UF-250. NYC\_629; 8/7/2009 Kelly Tr. 75:10-18. He further testified that he would not put a stop in his memo book unless he did the stop or unless he thought there was some reason to put it in there to refresh his memory in the future. 8/7/09 Kelly Tr. 75:19-76:9.

468. Floyd testified that other than the April 20, 2007 and February 2008 stops, and an arrest in 2005, he has never been stopped in New York. 4/30/09 Floyd Tr. at 47:9-14; 211:10–21.

469. Officer Joyce was unaware of any quotas or expectation about the number of UF250s to fill out for any tour including tours on Impact Overtime. Joyce Tr. at 72:5-10; 79:11-20; 170:9-171:23.

470. Officer Hernandez does not try to complete a certain number of stops per month nor has any supervisor ever suggested that he should be conducting more stops. Hernandez Tr. at 193:3-12.

471. Sergeant Kelly has never discussed the quantity of stops conducted on an Impact Overtime tour nor has he ever been encouraged to make a certain number of stops on an Impact Overtime tour. Kelly Tr. at 93:19-94:3.

472. As an Anti-Crime Sergeant, Sergeant Kelly he has not attempted to deter crimes by increasing the numbers of stop and frisks that he has conducted. Kelly Tr. at 100:19-24.

473. Sergeant Kelly does not try to conduct a certain number of stops each month or each tour, nor has anyone ever told him that he should try to conduct a certain number of stops each month or each tour. Kelly Tr. at 143:3-14.

474. Sergeant Kelly does not know if it is a goal of the NYPD to increase the number of stops or the number of UF250s. Kelly Tr. at 144:8-21.

June 6 or June 9, 2008 Incident Alleged By David Ourlicht – John Doe Officers

475. David Ourlicht testified on May 14, 2009 that, while he was sitting on a bench outside the Johnson public housing complex located in Harlem, New York, two police officers approached Ourlicht, told him to get on the ground, and advised that they heard someone had a gun. Deposition of David Ourlicht, dated May 14, 2009 (“5/14/09 Ourlicht Tr.”), at 155:21–24, 159:14–160:2, 161:1–163:25, 167:13–25.

476. The Second Amended Complaint alleges that this incident took place on June 9, 2008. Second Amended Class Action Complaint For Declaratory and Injunctive Relief and Individual Damages, filed October 20, 2008 (“Second Amended Complaint”), at ¶90.

477. Ourlicht testified that although he did not recall the exact date of the incident, he knows that it occurred on the same day that he had an appointment with, and saw, his attorneys in this lawsuit. 5/14/09 Ourlicht Tr. at 151:21-152:21. At no time thereafter did plaintiff or plaintiffs' counsel disclose the date of that meeting.

478. Ourlicht testified that this incident occurred in the morning, after 9:00 a.m. and around 10:00 a.m. 5/14/09 Ourlicht Tr. at 154:3-6, 170:23-171:10.

479. Ourlicht testified that when he and his friend were sitting on the bench, there were three other African-American men sitting in the same area. 5/14/09 Ourlicht Tr. at 160:3-5, 8-9, 23-25, 161:1-2.

480. Ourlicht testified that his friend is a black male, about 23 or 24 years old and about 6' 3." 5/14/09 Ourlicht Tr. at 156:12-20, 160: 8-13.

481. Ourlicht testified that after sitting on the bench for about ten minutes, while his friend was smoking a cigarette, Ourlicht noticed two male uniformed police officers walking through the housing complex. 5/14/09 Ourlicht Tr. at 161:17-162:9.

482. Ourlicht testified that these two officers were not strolling or walking slowly; they were walking as if they were going somewhere. 5/14/09 Ourlicht Tr. at 162:21-163:1.

483. Ourlicht testified that when the two officers reached the corner where the building began, the officers turned, had drawn their weapons and were screaming, "Get on the floor, get on the floor!" and "There's a gun around here. Everybody get on the floor!" 5/14/09 Ourlicht Tr. at 163:13-22.

484. Ourlicht testified and alleged that as the two officers were screaming, a blue and white police van arrived marked 9466 and three or four officers exited the van. 5/14/09 Ourlicht Tr. at 163:23–164:4; *see* Second Amended Complaint at ¶93.

485. Ourlicht testified that all of the police officers were running when they exited the blue and white van and had their guns out. 5/14/09 Ourlicht Tr. at 164:16–23.

486. Ourlicht testified that all of the police officers at the scene were white males in dark blue uniforms with NYPD patches. 5/14/09 Ourlicht Tr. at 166:4–167:2.

487. Ourlicht testified that while he was on the ground, the officers told him that they had received reports that there was a gun “around here.” 5/14/09 Ourlicht Tr. at 167:13–17.

488. Ourlicht testified that while he was on the ground, the officers patted him down: The officers lifted him up by the belt “check[ed] underneath [him], and check[ed his] pockets. And they didn’t even go in. They didn’t take anything out of [his] pockets.” 5/14/09 Ourlicht Tr. at 167:17–20.

489. Ourlicht testified that the officers told all of the individuals that had been sitting outside to lay on the ground and lifted them up by the belts and searched them. 5/14/09 Ourlicht Tr. at 165:23-25, 167:13–25, 168:14-20.

490. Ourlicht testified that after about ten minutes of laying on the ground, the officers told all of the men they could get up. *Id.*

491. Ourlicht testified that the officers apologized, but explained there were reports of a gun. 5/14/09 Ourlicht Tr. at 167:13-25.

492. Ourlicht testified that the officers asked all of the men for their names. 5/14/09 Ourlicht Tr. at 168:1–3.

493. Ourlicht testified that the officers asked Ourlicht for identification, and he told them that he did not have identification with him and gave the officer his name, which the officer wrote down. 5/14/09 Ourlicht Tr. at 168:1–10.

494. Ourlicht testified that after the officers searched him and the other men, two of the officers went into the building. 5/14/09 Ourlicht Tr. at 165:22–166:3.

495. Ourlicht testified that it was possible that some officers went into the building while he was laying on the ground. 5/14/09 Ourlicht Tr. at 169:1–12.

496. On August 24, 2009, Ourlicht participated in a photo array procedure to identify the officers whom he alleged stopped him. Ourlicht was shown two different sets of photographs of officers: one for June 6, 2008, and one for June 9, 2008, and viewed a total of 402 photographs. *See* Declaration of NYPD Detective Santos J. Albino, dated February 2, 2011 (“Albino Dec.”) at ¶6; Transcript of Photo Array, dated August 24, 2009 (“8/24/09 Ourlicht Tr.”), at 36:23–37:3, 55:21–56:20.

497. The photos used in the photo arrays came from an NYPD computer database in which the photos of active officers are updated every five years, coinciding with the expiration and renewal of an officers’ NYPD identification card. Albino Dec. ¶8.

498. Ourlicht viewed 30 pages of photographs of police officers including officers assigned to PSA 5 on June 6, 2008. 8/24/09 Ourlicht Tr. at 37:5–12, 37:25–38:5, 9–12; Albino Dec. at ¶¶6, 7, 9; *see* NYC\_2\_8711–8819.

499. Each page contained six photographs of police officers, for a total of 180 photographs. 8/24/09 Ourlicht Tr. at 3:14–15, 38:22–24; Albino Dec. at ¶7, 9; *see* NYC\_2\_8711–8819.

500. Of these photos, Ourlicht did not definitively identify anyone from the photographs as the officers that were allegedly present at the incident that occurred on June 6, 2008, or June 9, 2008. 8/24/09 Ourlicht Tr. at 38:16–55:18; Albino Dec. at ¶11.

501. Ourlicht viewed 37 pages of photographs of police officers including officers assigned to PSA 5 on June 9, 2008. 8/24/09 Ourlicht Tr. at 55:21–56:3, 5–20; Albino Dec. at ¶¶6, 7, 10; *see* NYC\_2\_8711 – NYC\_2\_8819.

502. Each page contained six photographs of police officers, for a total of 222 photographs. 8/24/09 Ourlicht Tr. at 3:14–15, 56:25–57:2; Albino Dec. at ¶7, 10; *see* NYC\_2\_8753–8819 (confidential).

503. Of these photos, Ourlicht did not definitively identify anyone from the photographs as the officers that were allegedly present at the incident that occurred on either June 6, 2008, or June 9, 2008. 8/24/09 Ourlicht Tr. at 56:22–76:15; *see* Albino Dec. at ¶11.

504. Out of the total 402 photos, Ourlicht signed the photos of eleven officers whom he thought may have been the NYPD officers present at the incident that occurred on June 6, 2008, or June 9, 2008. Albino Dec. at ¶12; 8/24/09 Ourlicht Tr. at 40:14–41:10, 12-20, 42:14–45:10, 51:3–52:12, 57:17–58:19, 59:14–60:14, 60:25–62:15, 63:1–64:13, 67:9–68:16.

505. Of these eleven individuals, only one was assigned to PSA5 at the time of the alleged incident; the others were not employed by NYPD at the time of the alleged incident or were not assigned to PSA5 at the time of the alleged incident. Albino Dec. at ¶12 & Exh. 3.

506. For the officers on duty and assigned to PSA 5 on June 6, 2008, the one officer whose photo Ourlicht signed who was assigned to PSA 5 at the time of the alleged incident was not at the site of the alleged incident according to the entries in his Activity Log. Albino Dec. at ¶12 & Exh. 1 (NYC\_2\_5521-23).

507. For the officers on duty and assigned to PSA 5 on June 9, 2008, the one officer whose photo Ourlicht signed who was assigned to PSA 5 at the time of the alleged incident was not on patrol and was the desk sergeant that day according to the roll call and his Activity Log. Albino Dec. at ¶12 & Exh. 2 (NYC\_2\_4538, NYC\_2\_7470-1).

508. Other than the August 24, 2009, photo array procedure, defendants were not on notice of nor did they attend any other photo array procedure attended by David Ourlicht.

509. On or about March 2, 2010, defendants served plaintiffs with their First Set of Requests For Admissions, in which defendants asked plaintiffs to admit that Officers Kennedy, Mifud, Campos and Pekusic were not involved in the alleged stop. *See* Defendants' First Set of Requests For Admissions, dated March 2, 2010, Requests 27-32, 47-48. In response, Ourlicht denied the requests and stated for the first time to defendants that Officers Kennedy, Mifud and Campos may have been involved in his alleged stop. Plaintiffs' Objections and Responses to Defendants' First Set of Requests For Admissions, dated April 1, 2010, at Responses to Requests 27-32, 47-48.

510. Defendants identified that on June 9, 2008, the PSA 5 officers who were assigned to Van 9466 during the second platoon were Officers Crawford and Socorro, and that their memo books and records show that Van 9466 was at Bellevue Hospital and thereafter at the 7th Precinct and Manhattan Central Booking in lower Manhattan at or around the time of the alleged stop. *See* Albino Dec. at ¶¶3, 4, 13 & Exh. 2; *see also* Grossman Dec., Exh. R.

511. Defendants identified that on June 6, 2008, the PSA 5 officers who were assigned to Van 9466 during the second platoon were Officers Negron, Delgado and Goris, and that their memo books and records show that they were in Van 9466 on truancy patrol and that

they were picking up several truants from 9:00 a.m. through 10:35 a.m., the time period during which that alleged stop occurred. Albino Dec. at ¶¶3, 5, 13 & Exh. 1.

512. When shown the photos of the officers assigned to Van 9466 on both dates at the August 24, 2009, photo array, Ourlicht stated that he did not recognize them. 8/24/09 Ourlicht Tr. at 46:25-47:9, 51:3-52:11, 54:25-55:18, 66:25-67:8, 68:17-69:15, 72:11-20, 74:6-16; *see* Albino Dec. at ¶ 13.

513. By letter dated August 3, 2009, defendants' counsel informed plaintiffs' counsel that the Ourlicht photo arrays for June 6 and June 9, 2008 would contain fillers. Grossman Dec., Exh. S. By email dated August 7, 2009, plaintiffs' counsel agreed to this procedure. Grossman Dec., Exh. T.

514. Thereafter, at the photo array procedure on August 24, 2009, plaintiffs told defendants that they objected to the use of fillers. 8/24/09 Ourlicht Tr. at 4:18-5:11.

515. After the August 24, 2009 photo array procedure, plaintiffs objected to the use of fillers in photo arrays and the court ordered that the remaining future photo arrays should be assembled without fillers. There were no remaining photo arrays to be done for the Ourlicht incidents.

516. After the photo array procedure, defendants produced the arrays, the names and location on each photo array of each officer depicted in the arrays and the memo books of all of the officers depicted in the arrays from PSA 5. NYC\_2\_8753-8819 (photo arrays) (confidential); NYC\_2\_12694-704 (officers' names, locations) (confidential); NYC\_2\_4340-414; NYC\_2\_5476-5537; NYC\_2\_7334-35; NYC\_2\_7441-46; NYC\_2\_7461-7536; NYC\_2\_8196-202; NYC\_2\_9530-31; NYC\_2\_9535-37; NYC\_2\_9622-30 (memo books).



517. By letter dated May 11, 2009, defendants' counsel informed plaintiffs' counsel of NYPD's efforts to identify John Doe officers for the Ourlicht June 6 or June 9, 2008, alleged incident. Grossman Dec., Exh. R.

518. Defendants' efforts to identify NYPD officers involved in Ourlicht's June 2008 alleged stop included review of roll calls, memo books, command logs and other department documents. NYC 3834 -- NYC 3836; NYC\_2\_4331; NYC\_2\_4340-4414; NYC\_2\_4531-4542; NYC\_2\_5471--5537; NYC\_2\_7334-7335; NYC\_2\_7435-7446; NYC\_2\_7461-7536; NYC\_2\_8196-8202; NYC\_2\_8733-8928; NYC\_2\_9386-92; NYC\_2\_9493-9531; NYC\_2\_9535-37 NYC\_2\_9622-30; NYC\_2\_9633-65.

Dated: New York, New York  
February 2, 2011

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