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February 16, 2016

Via ECF
Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: ***David Floyd, et al. v. City of New York*, No. 08 Civ. 1034 (AT)**

Dear Judge Torres:

On behalf of Plaintiffs in the above-captioned matter, we write in connection with the second status report (Report) of the Independent Monitor filed with the Court on February 16, 2016. *See* Dkt # 523. The report contains the status of reforms and it does not provide the parties' current positions on reforms being developed. We respectfully submit this letter to memorialize Plaintiffs' positions with respect to certain reforms that are in development. We believe the reform components we identify below will be necessary to bring the New York Police Department's stop and frisk practices into compliance with the Constitution, and we look forward to continuing to work with the NYPD and the Monitor through the consultative remedial process to develop them. This letter is not intended as an exhaustive list of Plaintiffs' current positions on reforms.

A. SQF Policies (Monitor's Report § III.A.2.)

In this section of his report, the Monitor discusses the content of the stop "tear-off receipt," which the NYPD has been piloting department-wide since September 2015, and notes that the NYPD is "exploring alternative ways to provide information to people stopped but not arrested." Dkt # 523 at 8. Plaintiffs maintain the position, expressed in our August 7, 2015 letter to the Court, *see* Dkt # 515, that more information than is currently included on the piloted tear-off receipt is necessary (and would be more consistent with the tear-off described in the August 2013 Remedial Order), and we have and will provide proposals on alternatives to the NYPD and the Monitor.

In addition, while this section of the Monitor's report discusses how the revised version of NYPD Patrol Guide Section 212-11 requires more complete recording by officers of the circumstances of Level 3 *Terry* stops, Dkt # 523 at 9, Plaintiffs maintain our position, originally expressed in our August 7, 2015 letter to the Court, that documentation of Level 1 and 2

encounters by NYPD officers is also necessary, *see* Dkt # 515 at 2, and that we intend to provide proposals for implementing this requirement to the Monitor and the NYPD.[1]

B. EIS (Monitor's Report §VII.C.2.)

In this section of his report, the Monitor describes some of the NYPD's ongoing efforts to develop an Early Intervention System (EIS) for detecting officers exhibiting at-risk behaviors. Among the efforts described by the Monitor is the NYPD's development of its Risk Assessment Information Liability System (RAILS). While the report discusses the various officer performance data sources which the NYPD plans to include in RAILS, the NYPD has thus far developed RAILS without an opportunity for input from Plaintiffs, although we do anticipate being given such opportunity moving forward. Based on discussions with and the trial testimony of our remedies expert, Professor Samuel Walker, it is Plaintiffs' position that an effective EIS will be necessary and that an effective EIS requires a single, streamlined database that identifies outliers – whether particular officers or commands – in a way that will trigger interventions. It is further Plaintiffs' position that the EIS must include the information that the NYPD currently represents it plans to include in RAILS, as well as the following additional information: officer stop activity (whether or not the subject of a complaint), use of force allegations (and whether those allegations resulted in charges or discipline), issuance of resisting arrest charges, public complaints (whether through the Office of Chief of Department (OCD), Internal Affairs Bureau (IAB), or CCRB), Department-initiated investigations and the outcomes of those investigations, criminal proceedings against an officer, judicial proceedings (such as restraining orders), prosecutorial decisions to decline to prosecute arrests, incidents involving loss, alleged theft or damage to department property and training history.

We note that, while the NYPD currently plans to include civil lawsuits in RAILS, it is unclear whether the Department plans to capture all lawsuits filed or a more limited subset of lawsuits, such as cases in which officers have requested indemnification. Plaintiffs' position is that the EIS must include all lawsuits filed against officers, and include data on the specific claims in those cases.

C. Handling of Complaints Substantiated by CCRB (Monitor's Report § VIII.B.2.)

While this section of the report describes the so-called "reconsideration process" implemented in December 2014, under which the NYPD's Department Advocate's Office (DAO) can and does ask the CCRB to reconsider its findings and disciplinary penalty recommendations for substantiated civilian misconduct complaints against NYPD officers, Plaintiffs believe that this reconsideration process is inconsistent with the Court's orders regarding reforms to discipline. *See*, *e.g.*, Dkt # 372 at 24 (requiring that DAO "improve its

[1] We note that the recently negotiated consent decree between the U.S. Department of Justice and the Ferguson, Missouri Police Department, would require the Ferguson PD to collect and analyze data on "voluntary contacts" between officers and civilians, which are defined in the decree itself as analogous to *DeBour* Level 1 and 2 encounters. *See United States v. City of Ferguson*, Consent Decree ¶¶ 77, 415(c), 435(d)(Jan. 26, 2016), available at https://www.fergusoncity.com/DocumentCenter/View/1920.

procedures for imposing discipline in response to [CCRB] findings of substantiated misconduct during stops," including "*increased deference to credibility determinations of the CCRB*")(emphasis added). Plaintiffs submit that the disciplinary reforms required by the Court's orders, most of which have yet to be developed, must include: (i) revising or eliminating the DAO reconsideration process; (ii) written policies to guide DAO staff on the application of the preponderance of the evidence standard and how to properly weigh civilian complainant testimony; (iii) written policies on giving deference to CCRB findings; and (iv) transparency when the NYPD departs from CCRB disciplinary penalty recommendations.

D. Performance Goals, Objectives, and Evaluation (Monitor Report § IX.B.)

This section of the report does not mention Plaintiffs' positions on the necessity of officer performance evaluation reforms or what those reforms must include. It is Plaintiffs' position that officer performance evaluation reforms are necessary and that these reforms will at a minimum mean that officer performance evaluations must: (i) include an assessment of whether officers are fulfilling two goals: constitutional policing and bias-free policing; (ii) be modified so that a supervisor must provide specific examples to support his or her ranking of the officer for each criterion; and (iii) consist of a list of specific metrics on which officers are to be evaluated that seeks to capture the constitutionality of officer behavior.

We look forward to developing reforms for Court approval in each of the aforementioned areas in consultation with the NYPD and the monitor. Thank you for your time and consideration.

Respectfully submitted,

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