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From: Marcos Soler, Deputy Executive Director, Policy

To: Board Members

Re: January through August Department Unable to Prosecute Rate

Date: October 9, 2013

From January to August, the Police Department declined to prosecute 28% of all substantiated CCRB cases that it has closed. In CCRB jargon, this rate is known as the Department-Unable-to-Prosecute or DUP rate. From January to July, the monthly rate fluctuated between 21% and 37%. However, the monthly rate reached its highest level in August – 70%.

In historical perspective, the current DUP rate of 28% is 13 percentage points higher than the rate in the same period of 2012 (15%). The DUP rate was 33% in 2007, 31% in 2008, and 27% in 2009. It then declined to 17% in 2010, 16% in 2011 and 21% in 2012.

From January through August, the NYPD declined to prosecute cases against 64 officers. In an additional 19 cases, the department has declined to prosecute at least one substantiated allegation against officers, while proceeding to prosecute other allegations in those cases.

By allegation, the Police Department declined to prosecute 111 allegations out of the 336 substantiated allegations in the cases it closed – a rate of 33%. The most common allegations the department declined to prosecute have been question, stop, frisk and/or search (54), vehicle stop and/or vehicle search (17) and discourtesy allegations (11).

During this time period, there were specific allegation categories with a higher than average DUP rate (33%). For example, the department declined to prosecute 75% of offensive language allegations (3 out of 4), 58% of all discourtesy allegations (11 out of 19), 46% of vehicle stops and searches (17 out of 37), and 42% of physical force allegations (5 out of 12). In the area of stop and frisk, the department declined to prosecute 58% of questions (7 out of 12), 35% of stops (30 out of 85), 17% of frisks (9 out of 54) and 28% of searches (8 out of 29). Premises entered and or searched had a 37% DUP rate (7 out of 19).

The department declined to prosecute 25% of cases in which the Board recommended Charges and Specifications (33 out of 134), 33% of cases in which the Board recommended Command Discipline (22 out of 67) and 38% of cases in which the Board recommended Instructions (9 out of 24). Since May, with the implementation of the APU, two thirds of the declined cases are those in which the Board recommended Command Discipline or Instructions.

In 17 of the 64 cases in which the department declined to prosecute the FADO* allegations, the Board noted other forms of misconduct outside CCRB jurisdiction, which is known as an "Other Misconduct Noted" or OMN. In 15 cases the department imposed discipline for the OMN but not the FADO allegation. In the remaining two cases, the department declined to prosecute even the OMN.

*FADO is the acronym for the four types of misconduct within CCRB jurisdiction: Force, Abuse of Authority, Discourtesy and Offensive Language.