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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 DELPHINE ALLEN, et al.,
17 Plaintiffs,
18 v.
19 CITY OF OAKLAND, et al.,
20 Defendants.

Case No. C 00-4599 TEH

**JOINT STATUS CONFERENCE
STATEMENT**

Date: July 10, 2017
Time: 2:30 p.m.
Courtroom 12 – 19th Floor

The Honorable Thelton E. Henderson

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I. CITY OF OAKLAND

A. Introduction.

City leaders humbly thank the Court for its unwavering commitment to help the City of Oakland implement sustainable reforms in the Oakland Police Department (“Department”). The Court has provided oversight to the Department for more than 14 years. The City appreciates this opportunity for an audience with the Court and welcomes future opportunities.

The citizens of Oakland deserve an effective, professional, and accountable police force. To that end, the City entered into the Negotiated Settlement Agreement and agreed to implement institutional improvements in many areas including police training, supervision, early warning systems, accountability mechanisms, and imposition of discipline. Although the Court agreed in prior orders that the City has made significant progress, the City recognizes that the City is at yet another critical juncture.

In recent years, the Department has faced several setbacks – including the reprehensible sexual misconduct – that are extremely troubling to City leaders. During this time of self-reflection, the City has identified its shortcomings and mistakes, and learned many lessons that will be incorporated into the Department’s practices going forward and are reflected in the City’s response to Mr. Swanson’s recommendations (discussed below).

Although City leaders are extremely disturbed, they are not discouraged. The recent setbacks have strengthened the City’s resolve to continue to improve the Department’s performance and relationships with the community that it serves and protects, to implement policies and procedures to coordinate the Department’s investigations with the Office of the City Attorney, and apprise the City Administrator, Mayor, City Attorney, and City Council of significant issues. The City is not shying away from the work that remains to reach full compliance with the Negotiated Settlement Agreement or our commitment to continue to strive to make the Department a model of constitutional and professional law enforcement.

1 **B. Swanson's June 2017 Report.**

2 The City thanks Mr. Swanson and Ms. Barron for their investigation and report. The
3 findings are compelling and the recommendations are sound. As we outline below, the City will
4 implement each recommendation in the report, as well as several self-identified initiatives. This is
5 not to say that we are finished analyzing the report or identifying lessons learned.

6 Among the lessons learned is the critical importance of the Department's ability to address
7 its shortcomings in a timely manner with integrity and candor. Along those lines, the Department
8 has implemented a number of changes, a few of which are highlighted below:

- 9 • The Chief of Police (or designated Deputy Chief) will make final decisions regarding
10 hiring Police Officer Trainees;
- 11 • Staffing in Recruiting and Backgrounds Unit has doubled and officers conduct
12 background investigations full-time;
- 13 • The Field Training Program moved under the authority of the Training Section to ensure
14 consistency in training and performance standards;
- 15 • IAD will submit Reports of Investigation to the Office of the City Attorney at least 30
16 days before presenting it to the Police Chief for review (unless the IAD Commander
17 shortens the review period); and
- 18 • The Commander of IAD Investigations Sections will meet weekly with staff, review
19 current caseloads, provide direction, conduct reviews of completed IAD investigations,
20 and direct appropriate revisions as necessary.

21 The goal of these significant process changes is to ensure a more robust review of officer
22 misconduct allegations, provide better and higher-level oversight of criminal and IAD
23 investigations, and improve hiring practices to better screen officers at every step including
24 recruitment, hiring, and training before they are sworn into duty.

25 The holistic nature of Mr. Swanson's and Ms. Barron's investigation has allowed City
26 leaders and the public to examine mistakes and shortcomings at institutional, departmental, and

1 divisional levels. As we have publically stated, it is imperative that we restore the public trust. The
2 report will help tremendously. All stakeholders in the Oakland Police Department – including those
3 living and working in Oakland – will benefit from the outside audit because it thoroughly evaluated
4 the City’s systems, safeguards, and internal controls.

5 Therefore, as we discuss more fully below, we accept the report and each recommendation
6 in the spirit of self-examination, resilience, and continued transformation. The City intends to
7 implement each recommendation and continue identifying additional areas for improvement.

8 **1. Recommendations and City’s Response.**

- 9 • Recommendation 1: Members of CID Should Be Trained on Departmental General Order
10 M-4.1

11 Response to 1: All current CID members will be trained, in person on DGO M-4.1 and the
12 Department’s duty to notify appropriate District Attorneys of alleged criminal conduct.

13 Thereafter, all new members of CID will be trained upon arrival. In addition, the
14 Department will require that all sworn personnel review DGO M-4.1 to remind them of their
15 role and duty in the reporting process. The policy review for all sworn personnel will
16 include a specific review of California Penal Code § 11166, which mandates that police
17 officers, among others, report crimes against children.

- 18
19 • Recommendation 2: CID Should Document Whether it is Notifying the DA’s Office of
20 Suspected Officer Criminal Misconduct

21 Response to 2: OPD will fully implement this recommendation. We recognize the need for
22 the Department to document its decision-making process every time there is an allegation of
23 criminal conduct. The Department believes it can make DGO M4.1 stronger and much
24 more straight forward with one major revision. Currently, the policy requires notification of
25 the DA only if the preliminary investigation supports a reasonable suspicion that criminal
26 conduct occurred. The Department is revising the policy to make reporting the default. In

1 other words, the policy will require notification of the DA unless the preliminary
2 investigation affirmatively exonerates the member in question. Again, even when the DA is
3 not notified, the Department will document that decision in accordance with this
4 Recommendation 2. OPD will train all CID personnel on changes to DGO M-4.1. All
5 training will be documented and tracked through Training Management System (TMS).
6 OPD will audit CID records to ensure appropriate documentation of DA notification
7 decisions.

- 8
9 • Recommendation 3: SVU Should Lead Investigations of Officer Sexual Criminal
10 Misconduct and Should Lead Interviews of Victims in Those Cases

11 Response to 3: In instances of suspected sexual misconduct, OPD will ensure SVU serves
12 as primary victim interviewer – regardless of other suspected crimes. CID commander will
13 ensure all CID members are trained. The mandates will be memorialized in the Bureau of
14 Investigations' Policy and Procedure.

- 15
16 • Recommendation 4: Handoff of Criminal Investigations of Officer Misconduct to IAD, or
17 the Conclusion of CID Investigations of Officer Criminal Misconduct, Should Require
18 Briefing and Sign-Off from the Chief or Assistant Chief

19 Response to 4: DGO M-4.1 will be revised to require formal, documented approval by the
20 Chief or Assistant Chief before hand-off to IAD. Under the policy revision, CID will
21 include such documentation, as well as documentation of the decision to notify DA in same
22 record.

- 23
24 • Recommendation 5: IAD Should Involve OCA Before Subject and Witness Interviews in
25 Investigations of Serious Allegations

26 Response to 5: The Department will fully implement this recommendation. The new

1 mandate will be reflected in IAD policy. In addition, OPD's Office of Inspector General
2 ("OIG") will periodically evaluate IAD's compliance with this mandate.

- 3
- 4 • Recommendation 6: Only the IAD Commander Should Be Permitted to Reject Advice
5 From OCA

6 Response to 6: OPD will modify TB V-T.1 as follows: (a) a stipulation that only the IAD
7 Commander can reject advice from OCA; (b) substantive comments from OCA will remain
8 in draft Reports of Investigation (ROI) for review by IAD Investigations Lieutenant and
9 Commander; (c) IAD investigators must discuss disagreement with OCA advice with IAD
10 supervisors. OIG will audit this process to ensure compliance. OIG will review draft
11 documents, evaluate whether advice was followed, and/or who declined advice. OCA will
12 also advise on their experience with this process.

- 13
- 14 • Recommendation 7: IAD Investigators Should be Trained Regarding When it is
15 Appropriate to Downgrade a Subject Officer to a Witness

16 Response 7: OCA training for IAD will include instructions on downgrading a subject
17 officer to a witness. Training will be tracked in TMS. OIG will audit compliance. OPD
18 will include IAD commander approval required to downgrade a subject officer to witness in
19 TB V-T.1

- 20
- 21 • Recommendation 8: IAD Lieutenants Overseeing Investigations Should Review
22 Investigative Plans, Interview Questions, and Interviews in Serious Cases

23 Response 8: OPD will modify TB V-T.1 to incorporate this recommendation. We will use
24 the same criteria for identifying serious allegations of misconduct as we will use to
25 implement Recommendation 5. OIG will periodically audit compliance.

26

- 1 • Recommendation 9: IAD Should Continue to Brief the City Administrator Monthly on
2 Major Investigations; the Chief of Police Should Meet with the Mayor Regularly to Discuss
3 IAD Matters

4 Response 9: OPD will continue monthly meetings with the City Administrator to update on
5 pending discipline and open investigations of serious allegations (as defined in
6 Recommendation 5). The Mayor will institute a monthly meeting with the Chief to review
7 IAD investigations per the recommendation. OPD will use a template for weekly meetings
8 between City Administrator and Chief that include notes regarding case updates. The
9 current DGO Q-01 (Major Incident Notifications) requires the City Administrator and
10 Mayor to be notified immediately if a member is involved in action that is likely to be the
11 “focus of great public interest” or bring the Department into “disrepute.” DGO Q-01 will be
12 modified to mirror the modified DGO M-4.1.

13 **2. Next Steps.**

14 In her short tenure with the City, the Chief of Police has demonstrated a diligent
15 commitment to holding the Department and her officers accountable for their shortcomings. She is
16 in the process of carefully reviewing Mr. Swanson’s report to identify specific performance
17 breaches at the individual officer level and engage in corrective, remedial action. The Chief has
18 also planned a Critical Incident Review to identify and thoroughly understand each failure at the
19 institutional level. Finally, the Chief will meet with Mr. Swanson in person to discuss his report in
20 an effort to gain as much insight as she can.

21 **C. PRIME Update.**

22 The City is creating PRIME to consolidate and manage several sources of OPD information
23 for the purpose of sustaining and improving compliance with Tasks 40 and 41: A “computerized
24 relational database for maintaining, integrating, and retrieving data necessary for supervision and
25 management of OPD and its personnel.”

26

1 PRIME replaces and replicates the functions of IPAS (Internal Personnel Assessment
2 System), the City's prior version of an early intervention system. In addition to replacing IPAS,
3 PRIME was designed with additional functionality. In particular, PRIME streamlines multiple
4 work processes, reduces duplicate data entry, avoids paper forms and file management when
5 possible, shares information across applications, and centralizes system processes and data in a
6 more comprehensive and reliable way.

7 PRIME is being built by Microsoft with assistance from the City of Oakland Information
8 Technology Department ("DIT") and OPD in two phases: PRIME 1.0 and PRIME 2.0.

9 **1. Current Status of PRIME 1.0.**

10 PRIME 1.0 went live in early May 2017. The system has already substantially reduced
11 manual processes and less efficient paper approval routing systems, including in some critically
12 important areas related to self-auditing and risk management. For example, before PRIME, use of
13 force reports and vehicle pursuits were tasked, reviewed, and approved through manual paper-
14 routing systems. Now, those reports are created in PRIME and approved in PRIME, allowing
15 instant tracking and improving accountability throughout the chain of command.

16 Admittedly, there have been significant implementation and performance issues with
17 PRIME 1.0, including numerous technological "bugs." These bugs are tracked and prioritized
18 weekly and addressed with a full-time team that includes representatives from DIT, Microsoft, and
19 OPD. There are additional issues related to ease of use, which are not defects, but hamper usability
20 and create opportunities for errors to be introduced into the data. These issues are also continually
21 cataloged and prioritized for reconfiguration.

22 The City believes these setbacks are temporary. They are all fixable; they will be fixed.
23 Indeed, the City Administration and OPD want to reassure the Court, the parties, and all
24 stakeholders that PRIME is absolutely *the highest-priority information technology project in*
25 *Oakland*. Numerous DIT and OPD staff worked tirelessly – including nights and weekends – over
26 the past six months to bring PRIME 1.0 online. For its part, the City Administration will work to

1 ensure that DIT and OPD have the necessary funding, resources, and support to fully and
2 successfully implement PRIME.

3 Some of the steps the City has taken (or is in the process of taking) to ensure PRIME's
4 success include:

- 5 • Hiring of a full-time Chief Strategic Advisor (Virginia Gleason) at OPD with significant
6 legal, law enforcement, and Information Technology experience. While the Chief and
7 Deputy Chief Danielle Outlaw are ultimately responsible for ensuring and maintaining
8 compliance with Tasks 40 and 41, Ms. Gleason brings critical IT governance skills to the
9 OPD Command Staff and will coordinate the planning, development, and
10 implementation of Departmental IT systems, including PRIME;
- 11 • Ensuring the personal involvement and attention of the City's new DIT director, Pete
12 Peterson, who has significant and critical experience in IT and software systems;
- 13 • With the cooperation of the Police Officers Association, temporarily extending the
14 assignments of several OPD personnel to the PRIME unit who, pursuant to the terms of
15 the MOU, would otherwise be reassigned to patrol or Internal Affairs; and
- 16 • Hiring an independent expert consulting firm with relevant experience to perform a
17 quality assurance review of PRIME 1.0 and develop and implement PRIME 2.0.

18 **2. PRIME 2.0.**

19 Unlike IPAS, PRIME is a web-based system and built to be extensible – i.e., OPD will have the
20 ability to add new components, modules, and functions. With PRIME 2.0, the OPD will go well
21 above and beyond the requirements of the NSA and compliance and seek to build an industry-
22 leading risk management system. Funding for PRIME 2.0 is included in the City Council's recently
23 adopted two-year budget.

24 ///

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1 The City has already committed to adding four additional capabilities, which include:

- 2 1. Integrating a new training management system, which will track officers' complete
3 training history from the Academy to separation from the Department and make that data
4 immediately accessible to supervisors;
- 5 2. A new OPD Personnel Database System to, *inter alia*, track all sworn and civilian
6 funded positions and personnel assignments in real-time;
- 7 3. Integrating body-worn camera footage to allow immediate review of stops, arrests, and
8 uses of force; and
- 9 4. In collaboration with Stanford University, next generation stop data analytics.

10 While these further innovations are not necessary for compliance with Task 40 or 41, they
11 nevertheless reflect the OPD's commitment to continually improving performance and reaching its
12 goal of becoming a model law enforcement agency.

13 14 **II. PLAINTIFFS' CURRENT POSITION**

15 This is a further status conference concerning the progress of the non-monetary settlement in
16 the "the "Riders Litigation" which was approved by the Court on January 22, 2003.

17 **A. The Report of the Court Appointed Investigator and Related Matters.**

18 The court issued an Order Setting Status Conference on June 27, 2017. This was less than a
19 week after the Court-Appointed Investigator filed his report on the City of Oakland's response to
20 allegations of officer sexual misconduct. The court stated "The report reached some very troubling
21 conclusions about how Defendants mishandled these allegations and did not aggressively pursue an
22 inquiry into what went wrong", Plaintiffs' attorneys agree with the court's characterization of the
23 report of its investigator.

24 The background of this case makes the present situation even more troubling. The
25 Negotiated Settlement Agreement was signed in January 2003. The original agreement was
26 supposed to last five years with no more than one additional two year extension. Right from the

1 outset, the actions of the Oakland Police Department and the City of Oakland made it clear that they
2 had no intention of complying with the agreement within the agreed upon deadline. Numerous one
3 and two year extensions followed.

4 By 2012, it became clear that the OPD would never attain compliance with the Negotiated
5 Settlement Agreement under the original terms of the settlement document. The Monitors could
6 only determine if the Oakland Police Department (OPD) was in compliance or not in compliance.
7 They had no power to enforce any of their recommendations. The OPD simply ignored most of
8 their recommendations and suffered no consequences for their actions.

9 After months of negotiations about giving the Monitor more power, Plaintiffs' attorneys
10 filed a motion in the fall of 2012 which essentially asked the court to place the OPD in receivership.
11 The parties reached a settlement pertaining to this motion which culminated in the Court's Order of
12 December 12, 2012. The Court's Order included the appointment of a Compliance Director "whose
13 mission will be to bring the Defendants into sustainable compliance with the NSA and AMOU".
14 The Compliance Director was given a number of powers which had not been given to the Monitor
15 in the original NSA. This included the power to develop a corrective action plan for any task for
16 which the Monitor finds Defendants to be out of compliance and "the power to review, investigate
17 and take corrective action regarding OPD policies, procedures and practices that are related to the
18 objectives of the NSA and AMOU, even if such policies, procedures, or practices do not fall
19 squarely within any specific NSA task". The Compliance Director also had the power to discipline
20 and demote OPD officers holding the rank of Deputy Chief and Assistant Chief and the power to
21 discipline, demote, or remove the Chief of Police.

22 The agreement between the parties that led to the Court's Order on December 12, 2012 was
23 intended to be a compromise between a full receivership and allowing the then existing status quo
24 to continue. For a period of time, it appeared as if the compromise had worked. The OPD made
25 significant progress in attaining compliance in 2013-2015. Many of the tasks attained compliance.
26 Uses of force plummeted with no corresponding threat to officer safety. Citizen complaints

1 declined and there were signs of a general cultural change at OPD that had spread to many of its
2 police officers.

3 Sadly, that progress fell short of substantial compliance with the Negotiated Settlement
4 Agreement. As a result of allegations of sexual misconduct that were improperly investigated, the
5 Court issued an order on March 23, 2016 which ordered the Monitor/Compliance Investigator to
6 ensure that these allegations were thoroughly investigated. Under the leadership of the
7 Monitor/Compliance Director, the OPD Internal Affairs Bureau, which had done a wholly
8 inadequate job of investigating the sexual misconduct allegations, now began to take this matter
9 seriously. As a result, twelve present and past members of the OPD were disciplined. The District
10 Attorney also prosecuted four OPD officers as a result of this incident.

11 There remained the investigation as to the “quality and sufficiency of OPD’s investigation of
12 potential officer sexual misconduct...that occurred prior to the Court’s March 23, 2016 order”.
13 (Court ‘Appointed Investigator’s Report on the City of Oakland’s Response to Allegations of
14 Officer Sexual Misconduct page 6) Initially, the City was going to do that investigation. However,
15 that investigation was not completed in a timely manner and the Court again intervened in January
16 2017, requesting that the law firm of Swanson and McNamara complete the inquiry of OPD’s initial
17 investigation.

18 The “Swanson Report” was released on June 21, 2017. Its core conclusion was that OPD’s
19 investigation into the allegations of sexual misconduct was “wholly inadequate” (Report p. 24).
20 The OPD’s Criminal Investigation Division (CID) closed its investigation almost immediately and
21 “it should not have” (Id.) The IAD performance was similarly deplorable. Available leads were not
22 pursued and the investigation was rife with inappropriate behavior towards the victim and other
23 misconduct.

24 Plaintiffs’ attorneys have not been told every name of the individuals referenced in the
25 Swanson report, or the exact details of what they did. Therefore, we are not in a position to make
26 conclusive decisions as to whether those responsible for the inadequate investigation and apparent

1 misconduct set forth in the report were ever held accountable.

2 To cite only one example, it appears as though the egregious conduct referenced on page 12
3 of the report --where the victim was told during her interview that her threats to expose Officer
4 O'Brien for having sex with her while she was underage was one of the main catalysts for Officer
5 O'Brien's suicide—was never investigated. This failure was particularly egregious since the
6 lieutenants overseeing Homicide and IAD, as well as the supervising sergeant from SVU, watched a
7 live feed of the interview in a separate room. (Report p.11). To make matters worse, the victim, in
8 apparent reaction to having the officers blame her for Officer O'Brien's suicide and tell her they
9 wanted to prevent another officer from hurting himself if the victim were to get mad at them, began
10 destroying evidence of her contact with the other officers in front of the two officers and apparently,
11 the supervisors watching the interview.

12 There is no evidence that any of the officers engaging in this behavior, or any of the
13 supervisors who observed it and apparently failed to report it, stop it, or discipline their
14 subordinates, were ever investigated, and if appropriate, disciplined by the Oakland Police
15 Department. If this is true, the conduct referenced in this matter may be exempt from discipline
16 because it has not been completed in one year pursuant to Government Code 3304.

17 Accordingly, Plaintiffs' attorneys request the court order the following immediate action by
18 the Oakland Police Department and the City of Oakland:

- 19 1. The City of Oakland prepare a list of every incident in the Swanson report that it
20 believes constituted potential misconduct and/or deficient performance and
21 procedures and investigate and/or make inquiries accordingly.
- 22 2. The City of Oakland state whether any allegation of potential misconduct
23 referenced above that was investigated was sustained or not sustained.
- 24 3. The City of Oakland state what was the discipline that was imposed regarding any
25 allegation that was sustained.

26

1 4. The City of Oakland state whether any of the incidents that constituted potential
2 misconduct and/or deficient performance and procedure was not investigated
3 and give the reason for the failure to investigate said incidents/behavior.

4 5. The City of Oakland state if any of the incidents/behavior referenced above that
5 were not investigated can no longer be investigated because of the deadlines
6 imposed by Government Code 3304 or for some other reason.

7 6. The City of Oakland identify the person(s) most responsible for any of the
8 incidents/behavior that should have been investigated and were not investigated.

9 7. The City of Oakland state whether the person(s) identified in Number 6 above will
10 be subject to discipline and if so, whether it will be conducted in a timely manner
11 and who will be responsible for the investigation.

12 Plaintiffs' attorneys further request that all of the above information be reported in
13 unredacted form to the Court and the Monitor/Compliance Director. Furthermore, to the maximum
14 extent allowed by law, that an appropriate report concerning the above findings be made available
15 to the public.

16 Plaintiffs' attorneys also approve of the recommendations of the Court-Appointed
17 Investigator. Plaintiffs' attorneys request that, at a minimum, the City of Oakland and the Oakland
18 Police Department implement the recommendations set forth in the Swanson Report, and that said
19 recommendations be reviewed by the Monitor/Compliance Director for implementation and
20 follow through.

21 Finally, Plaintiffs' attorneys take note of the Court-Appointed Investigator's comments
22 about the NSA:

23 "The inadequacy of the investigations prior to the Court's intervention raises issues
24 concerning OPD's compliance with the NSA. It calls into question the Department's ability to
25 comply with the NSA's requirements that officer misconduct be adequately disciplined and
26 that allegations of misconduct be timely reported to the DA's Office. The fact that Court

1 intervention was required to ensure OPD conducted a thorough investigation and to alert the
2 DA to the allegations also casts doubt on whether OPD's reforms are sustainable in the
3 absence of court supervision."

4 Swanson report p. 28.

5 The failure to properly investigate the sexual misconduct from September 2015-March
6 2016 without court intervention and the possible/apparent failure to investigate possible misconduct
7 during the investigation itself raises troubling questions about whether the senior leadership of the
8 City of Oakland and the Oakland Police Department will ever comply with the Negotiated
9 Settlement Agreement.. The Court itself concluded in its December 12, 2012 order that further
10 methods would be instituted if compliance with the NSA was not attained. The court specifically
11 stated that "such remedies may include, but are not limited to, contempt, monetary sanctions,
12 expansion of the Compliance Director's powers, or full receivership,"

13 Both the criminal and civil contempt process has been employed where public officials have
14 failed to comply with the court's orders in civil rights actions against law enforcement agencies.
15 See Manuel de Jesus Ortega Melendres, et al., Plaintiffs and United State of America, Plaintiff-
16 Intervenor v. Paul Penzone, in his official capacity as Sheriff of Maricopa County, et al., Defendants
17 Case No. CV-07-2513-PHX-GMS. The contempt process has the advantage of punishing the actual
18 party causing the problem, rather than punishing others who are associated with him/them through
19 no fault of their own. It is time that officials of the City of Oakland took responsibility for the
20 completion of the Negotiated Settlement Agreement and are held accountable for their failure to
21 comply with an agreement that should have been resolved years ago.

22 **B. Key NSA Tasks Not in Compliance or In Partial Compliance.**

23 **1. Prime.**

24 The court stated in its June 27, 2017 Order that "the Monitor's recent reports have raised
25 serious concerns about PRIME, the new personnel assessment system which is a critical part of
26 Defendants' risk Management plan". Plaintiffs' attorneys agree that the completion date for Prime

1 is not yet clearly in sight, and that the enormous financial commitment to the project must result in
2 a system that makes the investment worthwhile and productive. When fully operational, PRIME
3 will be an extremely valuable tool for the Oakland Police Department to fight crime, to track officer
4 performance, and to provide police services to Oakland citizens in a fair and impartial manner. The
5 problem is to get there and to use this system in a manner which utilizes all of its benefits.

6 On June 6, 2017, the OPD put out a “Prime Update” which set forth a Project Timeline for
7 Prime 2.0. That time line included completion of a number of operations Plaintiffs’ Attorneys
8 believe is critical to the compliance effort including Stop Data (“Task 34), Task 5 compliance, and
9 supervision of young officers in the Academy and Field Training Programs. This last aspect is
10 particularly important since so many of the major actors in the recent sex scandals have been
11 officers who have been with OPD for a comparatively short time.

12 The timeline provided by OPD calls for “PRIME 2 Sign Off” on March 30, 2019, which
13 appears to be the date by which the system will be fully operational. Among the various milestones
14 are three aspects which Plaintiffs’ Attorneys believe are critical to the compliance effort:

15 **a. Integration of Stanford reports and other Stop Data information into
PRIME.**

16 When fully operational, PRIME will have the ability to identify officers who are conducting stops
17 and making searches with no “yield” (i.e. results such as seizure of contraband, arrests with
18 probable cause, warrants etc.) compared to other officers in their squad or other officers working in
19 the Area they patrol. The supervisors, when appropriate to their supervision, will then have the
20 opportunity to check the same officers’ performance in the past, even when working in other
21 assignments. Other programs will identify if the officer is an “outlier”, i.e. they are performing (or
22 not performing) in a manner similar to other officers in other situations. The officer in question,
23 when appropriate, can then be subject to a variety of techniques to improve his or her performance,
24 including additional training, counseling, and when appropriate, intervention and discipline.///

25 Some of these programs are available now under existing OPD data bases. However, under
26 PRIME, the data from the research of Doctor Jennifer Eberhardt, will be integrated into the PRIME

1 system. The overall impact of this data integration will enormously increase the OPD's ability to
2 identify problem officers who are engaged in inequitable treatment of minorities and alert
3 supervisors to "fixable" problems before an Oakland officer causes or participates in an incident
4 which will be tragic for all involved parties.

5 **b. Integration of Body Worn Camera Footage into PRIME.**

6 The ability of supervisors and others to access Body Worn Camera footage into the PRIME
7 system has many advantages for the Oakland Police Department. Additional uses for this data will
8 likely become apparent once the system is put into use. The crime fighting advantages of a system
9 that can see various crime scenes and possibly see clues from one scene to solve a crime at another
10 scene seem obvious. At the same time, to further NSA compliance, the ability to use Body Worn
11 Camera footage for changing officer behavior towards racial minorities and poor people opens up a
12 whole new way of making the OPD able to engage in more equitable policing and improve
13 community relations throughout Oakland.

14 Only a month ago, Doctor Eberhardt published a study based on a comprehensive
15 examination of Body Worn Camera footage. It found that police officers are significantly less
16 respectful and consistently ruder toward black motorists during routine traffic stops than they are
17 toward white drivers.

18 Doctor Eberhardt stated in an interview that it was unlikely that the results were unique to
19 Oakland and that she would expect similar imbalances to show up throughout the United States. At
20 the same time, her study shows that by analyzing the officers speech for indicia of respect
21 (including formality, friendliness, and politeness), officers could be put on notice of examples of
22 implicit bias and be trained to conduct traffic stops and other encounters in a more race neutral way
23 that would improve community relations and undoubtedly make racial minorities more receptive to
24 cooperating with police to fight crime.

25 Integration of Body Worn Camera Footage into PRIME would allow supervisors and
26 commanders to view officer conduct as it happened at various times and in various locations. The

1 ability to identify any differences in the way officers approached community members of different
2 races would open up an unprecedented opportunity to work with officers to change their behavior
3 and the resulting impact on inequitable treatment towards minorities could be extremely significant.

4 **c. Ability to Easily Access Academy Performance and Field Training**
5 **Program Performance in a single system and integration of both data**
6 **bases into a manner compatible with PRIME.**

7 In the aftermath of the sex scandal, the Oakland Police Department launched a
8 comprehensive program to examine what had caused this problem that garnered national headlines.
9 The investigation quickly focused on the fact that most of the involved officers were recent
10 graduates from the Academy and had relatively little experience with the Oakland Police
11 Department.

12 Further investigation revealed that the Academy Program and the Field Training Program
13 were part of different data bases and that Field Training Officers were unable to easily access
14 Academy Records to see if problems their trainees encountered on the street were issues the officers
15 had when they were recruits in the Academy. This was only part of a problem of record keeping
16 that prevented proper supervision of officers at a time when effective supervision was critical to
17 their success.

18 Prime 2.0 will integrate these and other records in a way that will promote more effective
19 supervision of young officers and will undoubtedly be an important tool in preventing future
20 problems or at least minimizing them when they do occur.

21 The 2019 "Sign Off" date creates a problem for the compliance effort if the Negotiated
22 Settlement Agreement can be concluded at an earlier date. Plaintiffs' attorneys are willing to work
23 with city officials for creative solutions to this problem should it become the significant factor with
24 bringing the OPD into compliance with the rest of the NSA.

25 **2. Task 34/Racial Profiling/ Fair and Equitable Policing.**

26 Task 34 and related issues has always been the most important aspect of the NSA to both the
original Riders clients and the Plaintiffs' attorneys. 128 of the 129 clients in the Allen case were

1 African American. Some of them were beaten, many were arrested, and they collectively served 40
2 years in jail for crimes they did not do. There is no doubt that our clients were singled out because
3 of their race. It is therefore imperative that the maximum effort be made to make the OPD an
4 example of fair and impartial policing, particularly in the current political environment.

5 It has taken years for the Oakland Police Department to collect reliable stop data and related
6 statistics. There have been some efforts to use that data towards improving yield and reducing some
7 of the ethnic disparities that were found. The Oakland Police should be commended for
8 participating in many of these studies.

9 In her report on stop data which was published in 2016, Professor Eberhardt made a number
10 of recommendations that were embraced by the Oakland Police Department. OPD's completion of
11 these recommendations will be an important sign that they are truly committed to complying with
12 Task 34.

13 Another commitment would be the OPD's taking meaningful substantive action as a result
14 of the stop data statistics that are available now. The OPD can identify Areas and Squads that are
15 underperforming in progress towards fair and impartial policing compared to other Areas and other
16 Squads. They now know there are disparities in the number of African Americans who are
17 handcuffed even when controls for other factors like crime rates and probation and parole status are
18 taken into account. The question today is how supervisors are being held accountable for the
19 actions of their subordinates and what progress is being made in these Areas and with these squads.
20 OPD has done a good job of data gathering but how have the officers' attitudes and the public's
21 perception changed since they have begun gathering data? Data gathering with no change is simply
22 a costly academic exercise. A good plan and a real commitment is needed to comply with Task 34.

23 **C. Conclusion.**

24 The Swanson Report has just been released. It remains to be seen how the Oakland Police
25 Department and the City of Oakland will respond to the report. Plaintiffs' attorneys believe the
26 Department has to account for the incidents/behavior referenced in the report and, point by point,

1 explain whether the referenced conduct was investigated within the limits imposed by Government
2 Code 3304, and if not, who is responsible for this failure and what will be the consequences to
3 them. Most importantly, the Defendants need to put systems, policies, and procedures in place that
4 ensure that an incident of this type will not happen again. These reforms have to be both credible
5 and contain detailed measures incorporating the recommendations in the Swanson report and other
6 ideas generated by the Oakland Police Department itself. These reforms will in turn be subject to
7 monitoring to see if they are actually put in practice by OPD. In short, Plaintiffs' counsel must see
8 if the OPD is an organization that can learn from this and provide a sustainable environment which
9 will justify further progress towards the conclusion of the Negotiated Settlement Agreement.

10 There is no doubt that there has been some measure of changes in the culture of the Oakland
11 Police Department. As stated above, uses of force are down, complaints are down, shootings are
12 down, and there is even some improvement in the issues surrounding Task 34. However, the
13 Swanson Report raises significant questions as to whether the reforms attained to date are
14 sustainable in the absence of court supervision. Only proof that the OPD has really learned
15 something from the events since September 2015, as well as their compliance with other
16 outstanding issues, will be enough for the City to comply with the NSA.

17 The issues involved in the Swanson report, although critical, cannot be allowed to
18 overshadow the principle reason why the Negotiated Settlement Agreement was necessary in the
19 first place. Task 34 remains the single most important part of the NSA. Long after the issues raised
20 in the Swanson report has receded into history, the problems of racial inequities in policing will
21 remain as an issue in Oakland and in our country. We have an unprecedented opportunity to make
22 progress in this vitally important area. We cannot allow any other issue to obscure the commitment
23 to making as much change as possible in bringing constitutional policing which respects all people
24 to Oakland.

25 It is not for the Monitor or Plaintiffs' attorneys to provide a roadmap to compliance on the
26 problems raised by the Swanson Report, and other problems with issues such as Prime, Internal

1 | Affairs, and Stop Data. The Oakland Police Department and the City of Oakland leadership that
2 | oversees it must show the parties and the court that they have learned from this experience and can
3 | and sustain the reforms in compliance, and can meaningfully comply with in the remaining tasks
4 | still outstanding. That demonstration should then be examined by the parties and the court to see if
5 | it is sufficient and even more importantly, if the Oakland Police Department has finally
6 | demonstrated that the it can really maintain all of the reforms in the aftermath of the Negotiated
7 | Settlement Agreement. Only then, can the City of Oakland attain compliance.

8 |

9 | **III. INTERVENOR, OAKLAND POLICE OFFICERS ASSOCIATION**

10 | Initially, Intervenor would like to acknowledge the efforts and guidance provided by Judge
11 | Henderson since the inception of the NSA. His vigilance and oversight have been instrumental in
12 | assisting the parties in accomplishing nearly all of the NSA related tasks. Despite initial challenges,
13 | Judge Henderson moved the parties forward and has positioned the City and the Oakland Police
14 | Department to continue advancing toward contemporary constitutional policing.

15 | Throughout the last fourteen years, Intervenor has been actively engaged in collaborative
16 | efforts to implement the terms of the NSA. With the assistance and cooperation of the Court,
17 | Intervenor has been provided opportunities to play a substantive role in the implementation of
18 | numerous NSA related policies and procedures.

19 | While Judge Henderson, the IMT and the parties are aware of the contributions by the
20 | Intervenor in the efforts to secure compliance with the NSA, Intervenor looks forward to working
21 | with Judge Orrick to assist the Court in any way it deems appropriate moving forward.

22 | The Court has asked the parties to be prepared to discuss two separate matters. The Court
23 | has identified concerns regarding the Court Appointed Investigators Report dated June 21, 2017
24 | ("Report") concerning the City's response to allegations of officer sexual misconduct. In addition, it
25 | appears the Court is looking for input and clarification regarding the IMT's stated concerns over the
26 | implementation of the new personal assessment system ("PRIME").

1 While the Intervenor is fully prepared to participate and contribute to a dialogue with the
2 Court on these issues, as identified below, the leadership of the Intervenor has limited percipient
3 knowledge of the facts and circumstances underlying these two matters.

4 As has been the case since the City entered into the Negotiated Settlement Agreement
5 ("NSA") in January of 2003, the Intervenor has participated to a great degree in the implementation
6 of the NSA. However, the role of the Intervenor generally does not include access to information,
7 investigations or policy development which would be considered confidential, internal or otherwise
8 within the exclusive domain of the Court, IMT and/or parties' efforts to secure compliance with the
9 NSA. That is not to say that the Court, IMT and parties have not been accommodating in their
10 attempts to include the Intervenor in a variety of discussions and policy development related to the
11 implementation of the NSA.

12 **A. PRIME.**

13 Intervenor is aware that there has been a long standing, continuous and concerted effort by
14 the parties to develop the new personnel assessment system ("PRIME"). While the Intervenor has
15 had a long-standing commitment to support a system that will allow for proactive and focused
16 personnel management, it appears that many involved are frustrated with the level of progress. As
17 for the Intervenor, we stand ready to assist the parties and further efforts to make PRIME a reality.
18 Intervenor believes that once the system is functioning it will be a tool that will benefit both
19 management and rank-and-file. That said, Intervenor is not intimately involved in the development
20 and implementation of PRIME. Therefore, Intervenor cannot assist the Court by offering additional
21 insights relative to the implementation of PRIME.

22 **B. Report of the Court Appointed Investigator.**

23 Many of the issues raised and facts referenced in the June 21st Report, were not known to
24 the leadership of the Intervenor until the issuance of the Report. That said, the Intervenor was aware
25 of the twelve individual members who were disciplined arising out of the facts and circumstances
26 cited in the Report.

1 As has been noted to the Court in the past, the representation of individual OPOA members
2 in administrative and criminal investigations as well as defense of members in discipline and
3 criminal matters are administered through a separate third party ERISA trust whereby individual
4 members secure representation by legal counsel through that ERISA trust. Therefore, much of the
5 facts and investigative efforts identified in the Report were not known to the leadership of the
6 Intervenor.

7 As to the discussion, findings and ultimate recommendations by the Court appointed
8 investigator, the Intervenor is also concerned about much of the matters raised in the Report and it
9 appears that there is cause for reflection and examination. It is certainly up to the parties, IMT and
10 this Court to make ultimate determinations on what course of action is appropriate. In light of the
11 fact that the Intervenor is not familiar with most of the materials, facts and investigation efforts,
12 Intervenor takes no position on the findings or recommendations. However, the responsibility for
13 the management and control of the Oakland Police Department must rest squarely on the shoulders
14 of the chief of police. In fact, the Report specifically states that as to the noted deficiencies, the
15 "ultimate responsibility" for the alleged transgressions of the Department must lie with then chief of
16 police.

17 The Intervenor notes that the Report "calls into question the Department's ability to comply
18 with the NSA's requirements that officer misconduct be adequately disciplined . . . ". While the
19 facts, allegations and conduct of the Department in this particular matter are of grave concern and
20 may require remedial action, it is the strong belief of the Intervenor that the Oakland Police
21 Department has made significant strides and achieved great success in securing compliance with the
22 NSA. From the perspective of the rank and file police officers, there has been a significant cultural
23 change in how the Oakland Police Department delivers its services to the citizens of Oakland. The
24 OPD of 2017 is not the OPD of 2003.

25 The Intervenor asserts that the challenges of being a police chief in a major American city
26 are daunting. However, the citizens of Oakland and this Court should expect the chief of police to

1 act in a manner consistent with his/her obligations and responsibilities. As noted in the Report, it
 2 was up to the then chief of police to set the tone on how cases would be investigated, moreover, the
 3 chief of police must set the tone on how to deal with crime in the Oakland community.

4 The Intervenor is hopeful that with the appointment of Chief Kirkpatrick that she will set the
 5 tone for accountability in how OPD governs itself and how the citizens of Oakland will live in a
 6 safer community. Ultimately it is her task and responsibility to ensure that the basic tenets of the
 7 NSA and all of its related successes achieved over the last 14 years endure. Intervenor would ask
 8 the Court to give Chief Kirkpatrick an opportunity to exercise her authority and lead the Department
 9 into full NSA compliance.

10 The Intervenor stands ready to continue its cooperative effort to ensure that the Oakland
 11 Police Department becomes fully compliant with the NSA.

12 Dated: July 5, 2017

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