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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 DELPHINE ALLEN; et al;

19 Plaintiffs,

20 vs.

21 CITY OF OAKLAND, et al.,

22 Defendants.
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MASTER CASE NO. C-00-4599 TEH

**DECLARATION OF PLAINTIFFS’
COUNSEL, JAMES B. CHANIN, IN
SUPPORT OF PLAINTIFFS’ MOTION FOR
APPOINTMENT OF A RECEIVER**

Hearing Date: December 13, 2012

Time: 10:00 a.m.

Courtroom: 2, 17th Floor

The Honorable Thelton E. Henderson

1 I, James B. Chanin, declare:

2 1. I am an attorney licensed to practice law in the State of California and represent the Plaintiffs
3 in the within action, along with John L. Burris and Julie M. Houk. I am duly admitted to practice law in
4 this Court. My co-counsel and I have been counsel of record for the Plaintiffs in this case since the
5 action was commenced on December 7, 2000.
6

7 2. I have personal knowledge of the matters stated herein and would testify to the same if called
8 to do so in a Court of law, except as to those matters which may be stated upon information and belief,
9 and as to those matters, I am informed and believe them to be true and correct to the best of my
10 knowledge.
11

12 3. I graduated from the University of San Francisco Law School in 1977 and was admitted to the
13 California Bar the same year. I have been in private practice since December 1977, with an emphasis in
14 civil litigation. A sizable portion of my practice is devoted to civil rights cases involving police
15 practices. I have handled numerous 42 U.S.C. Section 1983 police misconduct cases during the course
16 of my law practice, including, but not limited to, claims involving alleged police misconduct against
17 police agencies in cities which include, Oakland, Richmond, Berkeley, Alameda, Hayward, San
18 Francisco, Sacramento, West Sacramento, El Cerrito, Folsom, Menlo Park, and against the CHP and
19 BART Police Department, among others. I have also represented police officers and police department
20 employees in Oakland, Berkeley, El Cerrito, Richmond, Piedmont, San Francisco, and other
21 jurisdictions.
22

23 4. In bringing these civil rights cases, one of my primary goals, aside from attaining monetary
24 relief for my individual clients' damages, is to ascertain whether there is anything I can do, through the
25 legal system, to prevent the recurrence of the conduct that led to the violation of my clients' rights; to
26 help bring meaningful change to improve police policies, practices, training and supervision; and to
27 enhance the delivery of Constitutional and professional policing services to the community.
28

1 5. To this end, I have endeavored in cases involving systemic violations, such as this one, to
2 make non-monetary relief a component of the settlement.

3 6. This 42 U.S.C. Section 1983 police misconduct action was commenced on December 7, 2000
4 in response to a pattern and practice of civil rights abuses by members of the OPD who became known
5 as the “Riders.” Eventually, one hundred nineteen (119) individual Plaintiffs, almost all of whom were
6 African Americans, joined the litigation. The Plaintiffs’ claims involved a litany of constitutional
7 violations and police atrocities, including, false arrests, unreasonable seizures, false imprisonments, the
8 planting of evidence, excessive use of force, falsification of police reports, racially biased policing and
9 even kidnapping.

10
11 7. “The Riders” scandal came to light after a rookie OPD officer, Keith Batt, blew the whistle on
12 repeated civil rights violations he witnessed while being trained by some of the worst offenders in the
13 OPD. I am informed and believe and thereon state that the Riders’ ringleader, Officer Frank Vasquez,
14 reportedly fled the country after the scandal came to light. *See, e.g.*, the New York Times article entitled,
15 “Police Corruption Charges Reopen Wounds in Oakland,” dated, November 30, 2000, a true and correct
16 copy of which is attached and incorporated herein by reference as Exhibit 44.

17
18 8. Officer Batt’s subsequent whistleblower lawsuit, filed as a result of retaliation he experienced
19 after unveiling the scandal, was removed to this Court by the defendants. *See, Batt v. City of Oakland,*
20 *et al.*, C 02-4975 TEH. The case was eventually settled for a reported \$625,000 according to a San
21 Francisco Chronicle article dated October 16, 2007, a true and correct copy of which is attached and
22 incorporated herein by reference as Exhibit 41. The Institute for Law Enforcement Administration
23 website also notes that Officer Batt went on to receive its 2001 Ethical Courage Award (a true and
24 correct copy of the article from this website is attached and incorporated herein by reference as Exhibit
25 42). Officer Batt also reportedly helped to solve a cold murder case involving a Pleasanton teenager last
26 year as a Detective for the Pleasanton Police Department. A true and correct copy of a Pleasanton Patch
27
28

1 news article, entitled, “UPDATE: Former Foothill High Student Arrested in Slaying of Tina Faelz,”
2 dated August 7, 2011, is attached and incorporated herein by reference as Exhibit 43.

3 9. As a result of the Riders scandal, the Alameda County District Attorney’s Office reviewed
4 cases that could be linked to this pattern and practice of police misconduct. That review resulted in the
5 dismissal of a large number of pending criminal cases and numerous wrongful convictions were
6 overturned. Ultimately, the 119 individual Plaintiffs who joined this suit, collectively settled their
7 damage claims with the City for \$10.5 million dollars.
8

9 10. The parties to this action also agreed to a non-monetary settlement agreement, known as the
10 “NSA,” which mandated that the City implement institutional reforms intended to prevent the recurrence
11 of the civil rights violations that gave rise to this litigation and to bring the OPD into step with
12 contemporary, professional policing practices. A true and accurate copy of the NSA is attached and
13 incorporated herein by reference as Exhibit 1.
14

15 11. The NSA was the product of more than a year of negotiations between Plaintiffs’ counsel,
16 Defendants’ counsel, representatives of the City, OPD and the parties’ respective police policy and
17 practice experts, including Plaintiffs’ current expert, Jeffery A. Schwartz, Ph.D. The NSA was entered
18 as an Order of this Court on January 22, 2003. The overall objective of the NSA was to provide for the
19 expeditious implementation, initially with the oversight of an outside monitoring body, of the best
20 available practices and procedures for police management in the areas of supervision, training and
21 accountability mechanisms, and to enhance the ability of the Oakland Police Department to protect the
22 lives, rights, dignity and property of the community it serves.
23

24 12. The “NSA” was intended to bring sorely needed reforms to the OPD. Plaintiffs’ counsel
25 truly hoped that the City and OPD would endeavor to come into compliance with these reforms within
26 the original five year compliance window set forth in the NSA. I believed that Plaintiffs had achieved a
27 milestone by obtaining this non-monetary relief and was optimistic when the parties finalized and filed
28

1 the NSA with the Court, that the City and OPD would diligently implement and enforce the NSA
2 reforms within the terms of the this agreement.

3 13. My optimism, however, turned to frustration and anger, as year after year passed by, and the
4 City and OPD failed to comply with critical aspects of the NSA. I grew particularly alarmed when the
5 first IMT uncovered numerous compliance failures and found that officers as well as supervisors and
6 commanders were openly disparaging the NSA reforms and refusing to comply with them.
7

8 14. Since 2003, there have been three Mayors, three City Administrators, four police chiefs and
9 numerous City Council members and City Attorneys who have been involved in efforts to realize these
10 reforms. My co-counsel and I have volunteered many uncompensated hours, and other hours at
11 significantly less than our customary market rates, in our personal desire and commitment to see these
12 reforms through to practice compliance. For over nine years, we have attended numerous meetings,
13 court hearings and have participated in hundreds of telephone conferences with City and OPD officials
14 and their counsel, attempting to arrive at strategies to bring the City and OPD into compliance with these
15 reforms.
16

17 15. In the meantime, the City and OPD have spent countless thousands and even millions of
18 dollars on consultants, the two IMT's, failed department technology and other expenses without
19 achieving practice compliance with reforms even they have told the Court are not novel or impossible to
20 achieve.
21

22 16. My co-counsel and I have tried everything that we could do in an effort to bring the City and
23 OPD into compliance during the past nine years. This included agreeing to give the City two extensions
24 of time to come into compliance, as well as lowering compliance standards on certain at the City's
25 request to facilitate compliance.
26

27 17. These efforts also included attempting to craft a post-settlement agreement that would place
28 more power in the hands of the current Monitor during March, April and May 2012. These efforts failed

1 when I was told by counsel for the City that it was taking the position that they could not agree to
2 provide the Monitor with additional powers because it would violate the City Administrator's powers
3 under the City Charter.

4
5 18. Throughout the course of the past nine years, it has been my honor to work alongside two
6 dedicated teams of independent monitors who have carried out their mission to evaluate and report on
7 the City's compliance efforts in a professional manner. Both teams have served the Court and the
8 parties well in this case and Plaintiffs support the current Monitor's continued involvement in the case to
9 carry out monitoring and assessment tasks. However, Plaintiffs' counsel also believe that given the
10 City's deplorable record of compliance failure, the appointment of a receiver at this juncture is the only
11 hope left for finally and fully achieving the NSA/AMOU reforms since, unlike the Monitor, a receiver
12 would have the power to order the City and OPD to take the action necessary to comply with these
13 reforms. We specifically request that the position of Monitor be continued, even if a Receiver is
14 appointed.
15

16
17 19. Given my experience in litigating this case for over 11 years, it is my opinion that unless a
18 receiver is now appointed, the NSA/AMOU reforms will fail and the result will be continued civil rights
19 violations, loss of life and injuries to innocent victims; a further waste of valuable judicial resources; and
20 at great expense to the taxpayers. Therefore, Plaintiffs respectfully move the Court for an Order
21 appointing a receiver to ensure that the Court Ordered NSA/AMOU reforms are finally realized and to
22 prevent further constitutional violations against the citizens of Oakland by the OPD.
23

24
25 20. Attached and incorporated herein by reference as Exhibit 2, is a true and accurate copy of
26 the Amended Memorandum of Understanding in which the parties agreed to a second extension for the
27 City to come into compliance with the NSA reforms to January 2014.

28
29 21. After this extension was agreed to, the City and OPD failed to come into phase 2 practice
30 compliance with critical tasks mandated by the NSA/AMOU. True and correct copies of the 23

1 Quarterly Reports that have been filed heretofore by the two, separate independent monitoring teams
2 since 2003 are attached and incorporated herein by reference, having the following docket and Exhibit
3 numbers: DKT Nos. 706 (Ex. 4), 690 (Ex. 7), 673(Ex. 8), 642(Ex. 9), 625(Ex. 10), 605(Ex. 11), 591 (Ex.
4 12), 571 (Ex. 13),550(Ex. 14), 536 (Ex. 15) ; 525(Ex. 16), 506(Ex. 17), 486(Ex, 18), 456(Ex. 19),
5 390(Ex. 20), 344(Ex. 21), 300(Ex. 22), 266(Ex. 23), 264(Ex. 24), 217(Ex. 25), 211(Ex. 26), 210(Ex. 27),
6 and 203(Ex. 28). These Quarterly Reports were either downloaded by Plaintiffs’ counsel from the
7 Court’s Pacer system (for reports that are available from Pacer in electronic form), or were downloaded
8 from the City of Oakland Police Department’s website in the case of reports filed before the advent of
9 efilings.
10

11 22. To assist the Court, Plaintiffs’ counsel prepared a summary of the Quarterly Reports of the
12 two IMT’s as they relate to NSA Tasks 2, 5, 20, 24, 25, 26, 30, 34, 40 and 41. These are Tasks that are
13 of particular concern at the present time because the City and OPD are either currently out of
14 compliance with them, will fall out of compliance with the tasks in the coming Monitor’s reports or have
15 a significant past history of failing practice compliance. The summary includes references to the
16 aforementioned Quarterly Reports, the Monitor’s Occupy Oakland Report that was filed on October 3,
17 2012 [DKT 746] as well as the Monitor’s draft of its 11th Quarterly Report. Plaintiffs are requesting that
18 the portions of this summary related to the 11th Quarterly Report be filed under seal until that report has
19 been published.
20
21

22 23. Attached and incorporated herein by reference as Exhibit 6, is a true and accurate copy of a
23 chart prepared by Plaintiffs’ counsel to assist the Court. It also appears as an Appendix to Plaintiffs’
24 Memorandum of Points and Authorities. The first page of this Exhibit is based on the NSA and AMOU
25 phase 2 practice compliance data contained in each of the IMT’s Quarterly reports from both the first
26 and second IMT, through the 10th Quarterly Report filed on July 30, 2012. The red squares represent
27 Tasks where the City and OPD were deemed to be out of full compliance and/or were only in partial or
28

1 deferred compliance by each IMT Quarterly Report. The green color coded squares represent that the
2 IMT found the City and OPD in compliance with that particular Task during a particular reporting
3 period. Exhibit 6(b), which Plaintiffs are asking to be filed under seal, includes data from the draft of
4 the 11th Quarterly Report, which has not yet been made final.
5

6 24. Attached and incorporated herein by reference as Exhibit 5 is a Chart prepared by the City of
7 Oakland, which was provided to me by counsel for the City of Oakland in August 2012. This chart
8 purports to set forth the City's compliance or lack of compliance with certain NSA Tasks beginning with
9 the 9th Quarterly Report of the first IMT, through the 9th Quarterly Report of the second IMT. The
10 City's chart did not include the first 8 Quarters for reasons unknown to Plaintiffs.
11

12 25. Attached and incorporated herein by reference as Exhibit 29 is a true and correct copy of the
13 August 14, 2012 Audit of Use of Force Reporting and Investigation by the Office of the Inspector
14 General of the Oakland Police Department. This audit demonstrates that the City and OPD remain out
15 of phase 2 practice compliance with NSA Tasks 24 and 25, which relate to use of force reporting and
16 investigation. This audit was downloaded from the City of Oakland Police Department's website by
17 Plaintiffs' counsel and was authenticated by Chief Jordan as Exhibit 51 during his deposition.
18

19 26. Attached and incorporated herein by reference as Exhibit 30 are true and accurate excerpts
20 from the deposition of City of Oakland Police Chief, Howard Jordan, that was taken by me on behalf of
21 the Plaintiffs. I took the first session of Chief's Jordan's deposition on August 9, 2012, and the second
22 session on September 6, 2012. A redacted version will be efiled with respect to the portions of the
23 transcript subject to protective order and other orders of this Court. The full unredacted version will be
24 filed with the Court under seal.
25

26 27. Attached and incorporated herein by reference as Ex. 31, is a true and accurate copy of the
27 City of Oakland's Amended Responses to Interrogatories, and Ex. A attached thereto.
28

1 28. Attached and incorporated herein by reference as Exhibit 32, is a true and accurate copy of
2 the reporter's transcript of a status conference held in this case by the Court on November 24, 2009. I
3 attended that status conference in person.

4 29. Attached and incorporated herein by reference as Exhibit 33, is a true and correct copy of the
5 June 14, 2012, Report of the Frazier Group, entitled, "Independent Investigation, Occupy Oakland
6 Response, October 25, 2011." This report was authenticated at the depositions taken by Chief Howard
7 Jordan as Exhibit 12 at his deposition.

8 30. Attached and incorporated herein by reference as Exhibit 34 is a true and correct copy of a
9 press release dated June 14, 2012, which the City of Oakland released when it published the Frazier
10 Report to the general public. This document was authenticated by Mayor Jean Quan as Exhibit 13 at her
11 deposition. I personally took Mayor Quan's deposition on behalf of Plaintiffs on September 25, 2012.
12

13 31. Attached and incorporated herein by reference as Exhibit 35 are true and accurate copies of
14 excerpts from the deposition of Deanna Santana, which I took on behalf of the Plaintiffs on August 29,
15 2012. A redacted version will be efiled with respect to the portions of the transcript subject to the
16 protective order and other orders of this Court. The full unredacted version will be filed with the Court
17 under seal.
18

19 32. Attached and incorporated herein by reference as Exhibit 36 are true and accurate copies of
20 excerpts from the deposition of Mayor, Jean Quan, which I took on behalf of the Plaintiffs on August
21 29, 2012.
22

23 33. Attached and incorporated herein by reference as Exhibit 37 are true and accurate copies of
24 excerpts from the deposition of Thomas Frazier, which I took on behalf of the Plaintiffs on August 23,
25 2012.
26

27 34. Attached and incorporated herein by reference as Exhibit 38 are true and accurate copies of
28 documents I was provided by the City of Oakland City Attorneys' office purporting to represent the

1 insulting and racially offensive documents that were posted in the City of Oakland Police Department
2 depicting the Honorable Thelton E. Henderson and Mayor Jean Quan. These postings are referred to in
3 the 10th Quarterly Report of the current Monitor (Ex. 4) and were authenticated by Mayor Quan as
4 Exhibit 41 at her deposition.
5

6 35. Attached and incorporated herein by reference is a declaration by Jan Gilbrecht.

7 36. Attached and incorporated herein by reference is a declaration by Nancy Appel.

8 37. Attached and incorporated herein by reference as Exhibits 45,83, 84, 85, respectively are
9 true and accurate copies of excerpts from the 12th, 1st and 11th Quarterly Report of the Independent
10 Monitor in reference to the City of Detroit's Court Ordered Consent Decrees. These reports were
11 downloaded from Pacer by Plaintiffs' counsel. These reports show that the City of Detroit has made
12 significant progress in coming into compliance with two consent decrees relating to that City's police
13 department and jail. Like Oakland, the consent decrees in Detroit are being monitored by Chief Robert
14 Warshaw and his group, Police Performance Solutions, LLC.
15

16 38. When I learned that Detroit was making significant progress in complying with its two
17 consent decrees, while Oakland was not, I decided to visit the Detroit Police Department, where I met
18 with members of the Department who were involved in the reform efforts there.
19

20 39. Based on my visit and additional information I have received, including the Monitor's
21 Quarterly Reports for the Detroit consent decrees, I came to the conclusion that one of the main reasons
22 that Detroit was succeeding was due to the fact that the command staff was committed to achieving
23 reforms, that the Department was fostering a good relationship with the community, and that the reforms
24 were taken seriously by all levels in the chain of command.
25

26 40. In addition to the Quarterly Monitor Reports attached to this declaration, I reviewed a recent
27 East Bay Express Article, entitled, "The People's Police Department, Why federal consent decrees are
28 working in Detroit, but not in Oakland," dated, September 19, 2012. A true and correct copy the article

1 is attached and incorporated herein by reference as Exhibit 78. The article examined both the court
2 ordered reforms in both cities and their relative successes in complying with the reforms. This article,
3 and the other evidence cited above regarding Detroit's success in complying with its consent decrees,
4 supports a reasonable conclusion that there is no legitimate reason why Oakland should not have done
5 the same with respect to the NSA/AMOU reforms. Attached as Ex. 87 are news articles, information
6 about the budgetary woes in Detroit and additional background information, to provide context for the
7 success Detroit achieved.
8

9 41. When I visited the Detroit Police Department, I learned that despite its budgetary crisis,
10 Detroit also has a Civil Rights Integrity Bureau which is fully-functioning and is larger than the Oakland
11 OIG. The OPD OIG has produced only two NSA audits in 2012, other than those required as part of the
12 *Oliver v. City of Oakland*, C08-04914 TEH, non-monetary settlement. By contrast, the IMT reported
13 that the CRIB unit performed six "comprehensive and accurate audits" in the previous reporting period
14 alone. Ex. 85, 11th IMT Report for Detroit, p. 176. Detroit also has a commander accountability meeting
15 each quarter where every commander is required to account for his subordinates' progress on
16 compliance, crime and other performance issues. At least some of these meetings are open to the public.
17 Oakland has no such meetings.
18

19 42. In reviewing the data acquired by the Monitor from both the OPD and the Detroit Police
20 Departments, concerning arrests, citizens' complaints, use of force and the drawing of a firearm, the
21 disparity in these statistics support the reasonable conclusion that the DPD is achieving its court
22 mandated reforms, whereas, the OPD is failing.
23

24 43. For example, the charts on p. 196 of the 12th Detroit IMT Report (Exhibit 45) and p. 195 of
25 the 11th Detroit IMT Report (Exhibit 85) detail the total number of arrests made per month by the
26 Detroit Police Department. These tables also provide the number of citizen complaints per 1000 arrests.
27 Using the total number of arrests per month and the citizen complaint rate statistics per 1000 arrests, I
28

1 was able to determine the total number of citizen complaints per month as set forth in the Chart prepared
2 by my office, which is set forth in Exhibit 58(a).

3 44. Based on this data, there were 1506 total citizen complaints from April 2011 through June
4 2012. Detroit therefore averaged approximately 100 complaints per month between April 2011 and
5 June 2012 ($1506 \text{ complaints} \div 15 \text{ months} = 100.4 \text{ complaints/month}$). According to the 9th Quarterly
6 Report for Oakland, OPD's IA division had classified 1,039 misconduct complaints *related to Occupy*
7 *Oakland alone*. (9th IMT Report, p. 78-79).

8 45. The charts on p. 196 of the 12th Detroit IMT Report (Exhibit 45) and p. 195 of the 11th
9 Detroit IMT Report (Exhibit 85) also provide the number of uses of force per 1000 arrests. Using the
10 total number of arrests per month and the use of force rate statistics per 1000 arrests, I was able to
11 determine the total number of uses of force per month, as set forth on the Chart prepared by my office
12 which is attached and incorporated herein by reference as Exhibit 58(b).

13 46. Based on this data, between April 2011 and March 2012 (i.e. one full calendar year), there
14 were 1095 uses of force and 30,688 arrests by the Detroit Police Department. This means there was one
15 use of force for every 28.025 arrests by DPD during this period. ($30,688 \text{ arrests} \div 1095 \text{ uses of force} =$
16 $28.025 \text{ arrests/use of force}$)

17 47. The chart on p. 87 of the 10th IMT Report for Oakland (Ex. 4), details the total number of
18 arrests per month between January 2010 and March 2012, as well as the percentage of these arrests
19 associated with a use of force. Given the total number of arrests and the percentage of total arrests
20 associated with a use of force, I was able to determine the total number of uses of force per month as set
21 forth on the Chart prepared by my office which is attached and incorporated herein as Exhibit 58(c).

22 48. Based on this data, the Oakland Police Department was responsible for 14,086 arrests and
23 4435 uses of force between April 2011 and March 2012. This means there was one use of force for
24 every 3.176 arrests by OPD during this period. ($14,086 \text{ arrests} \div 4435 \text{ uses of force} = 3.176 \text{ arrests/use}$
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1 of force). The ratio of uses of force per arrest is therefore 8.83 times greater in Oakland than it is in
2 Detroit (28.025 arrests/use of force in Detroit ÷ 3.176 arrests/use of force in Oakland = 8.83).

3 49. Per a May 3, 2012 email from Oakland Assistant Police Chief, Anthony Toribio, a true and
4 accurate copy of which is attached and incorporated herein by reference as Exhibit 86, OPD had 3,623
5 pointing of firearms incidents in 2011 and 925 in the first quarter of 2012. By contrast, there were only
6 18 instances when a Detroit Police Officer drew a firearm and acquired a target in the third quarter of
7 2011; 12 such incidents in the last quarter of 2011; and 30 gun-drawing incidents in the first quarter of
8 2012. (Ex. 85, 11th IMT Report for Detroit, p. 92). Based on this data, DPD therefore averaged 20 gun-
9 drawing incidents per quarter while Oakland averaged 909.6 such instances, a 45:1 ratio.
10

11 50. Attached and incorporated herein by reference as Exhibit 46 is a true and accurate copy of a
12 compliance matrix provided to me by the City of Oakland City Attorney's office, purporting to represent
13 the status of the City of Oakland's compliance with certain NSA/AMOU Tasks in August 2012. This
14 document is being filed under seal pursuant to the standing protective order in this case. A redacted
15 version will be efiled.
16

17 51. Attached and incorporated herein by reference as Exhibit 47 is a true and accurate copy of a
18 compliance matrix provided to me by the City of Oakland City Attorney's office, purporting to represent
19 the status of the City of Oakland's compliance with certain NSA/AMOU Tasks in September 2012. This
20 document is being filed under seal pursuant to the standing protective order in this case. A redacted
21 version will be efiled.
22

23 52. Attached and incorporated herein by reference as Exhibit 48 is a true and accurate copy of
24 the reporter's transcript of a status conference held in this action on February 14, 2005. I personally
25 attended this status conference.
26
27
28

1 53. Attached and incorporated herein by reference as Exhibit 49 is a true and accurate copy of
2 excerpts from the reporter's transcript of a Case Management Conference held in this action on
3 September 16, 2010. I personally attended this hearing.

4 54. Attached and incorporated herein by reference as Exhibit 50 is a true and accurate copy of a
5 Thirteenth Weekly Compliance Update that I received from the City of Oakland during the regular
6 course of the exchange of data and information pertaining to the City's compliance with the
7 NSA/AMOU reforms. This document is being filed under seal pursuant to the standing protective order
8 in this case. A redacted version will be efiled.

9 55. Attached and incorporated herein by reference as Exhibit 51 is a true and accurate copy of a
10 Joint Case Management Statement that was filed by the parties with the Court in this action on
11 December 2, 2010.

12 56. Attached and incorporated herein by reference as Exhibit 52 is a true and accurate copy of a
13 28th Bi-Weekly Compliance Update for May 8-21, 2011, that I received from the City of Oakland
14 during the regular course of the exchange of data and information pertaining to the City's compliance
15 with the NSA/AMOU reforms. This document is being filed under seal pursuant to the standing
16 protective order in this case. A redacted version will be efiled.

17 57. Attached and incorporated herein by reference as Exhibit 53 is a true and accurate copy of
18 an Oakland North website article entitled, "Oakland Police Chief Anthony Batts announces
19 Resignation," dated October 11, 2011.

20 58. Attached and incorporated herein by reference as Exhibit 54 is a true and accurate copy of
21 the 12th Quarterly Report of the Monitor concerning the City of Detroit's consent decrees.

22 59. Attached and incorporated herein by reference as Exhibit 55 is the Declaration of Jeffrey A.
23 Schwartz, Plaintiffs' police policy and practices expert, which also contains a copy of his report, resume
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1 and additional information concerning his qualifications. This document is being filed under seal
2 pursuant to the standing protective order in this case. A redacted version will be efiled.

3 60. Attached and incorporated herein by reference as Exhibit 56 is a true and accurate copy of
4 the Monitor's Report concerning Officer Involved Shootings, which was filed in redacted form on
5 October 2, 2012 by the Court. [DKT 744]. It is Plaintiffs' understanding that the full, unredacted report
6 has already been filed with the Court under seal.
7

8 61. Attached and incorporated herein by reference as Exhibit 59 is a true and accurate copy of
9 excerpts from the City of Oakland's City Attorney's annual reports from 2002 to 2011 which contain
10 information relating to the amounts paid by the City and its insurance carriers as a result of police
11 misconduct lawsuits and claims. These documents were downloaded by Plaintiff's counsel from the
12 City of Oakland's website. The data extracted from these reports indicates that the City of Oakland paid
13 \$31,245,672.00 for police claims and litigation during this period from City funds. The data also shows
14 the City's insurance carriers paid an additional \$15.58 million for police claims and litigation during this
15 same period. As a result, between 2002 and 2011, the City Attorney's Reports show that the amount
16 paid on account of police claims and lawsuits involving the City of Oakland totaled \$46.83 million
17 dollars (\$31.25 million paid by Oakland + \$15.58 million paid by insurance carriers). Some of the civil
18 rights actions that were settled and/or went to judgment after the NSA was entered in 2003, include the
19 following cases that I handled and/or my co-counsel handled:
20
21

22 a. *Local 10, et al. v. City of Oakland, et al.*, Case No. C-03-2962 TEH (use of excessive force by
23 OPD officers against non-violent protesters and Longshoreman that were not part of the demonstration,
24 including the use of so-called "less lethal" munitions which left some of the plaintiffs were permanent
scarring and lifelong injuries);

25 b. *Reginald Oliver, et al. v. City of Oakland, et al.*, Case No. C08-04914 TEH (repeated course
26 of conduct in which members of the OPD made intentionally false and/or misleading representations in
27 search warrant affidavits, resulting numerous illegal and destructive residential searches, false arrests
28 and false imprisonments of predominantly African American and other racial minority citizens; OPD
found nearly 2/3's of warrant affidavits in drug x-buys" contained recklessly or intentionally false
allegations);

1
2 c. *John Smith, et al. v. City of Oakland, et al.*, Case No. C07-6298 MHP (Repeated custom and
3 practice by OPD officers of engaging in humiliating and intrusive strip searches of citizens in public.
4 After the Court awarded punitive damages to some of plaintiffs, the City agreed to indemnify the
5 officers and pay the punitive damage awards. See, e.g., Smith case, DKT 66, 8/4/2011. A true and
6 correct copy of the Court's Order following a trial of several of these cases is attached and incorporated
7 herein by reference as Exhibit 72);

8 d. *Estate of Amaro v. City of Oakland, et al.*, Case No. C09-01019 WHA (OPD subjected
9 decedent to excessive force, denied him medical care and engaged in a cover-up of what happened to the
10 decedent. Not a single officer was terminated or disciplined for the use of excessive force on the
11 decedent which led to his death. See, e.g., 9th Cir. opinion affirmed denial of defense summary
12 judgment motion, 653 F.3d 808 (9th Cir. 2011); a true and correct copy of the Ninth Circuit's opinion is
13 attached and incorporated herein by reference as Exhibit. 73; a true and accurate copy of a San Francisco
14 Chronicle article concerning the Amaro case is attached and incorporated herein by reference as Exhibit
15 80);

16 e. *Estate of Woodfox v. City of Oakland, et al.*, C08-04148 WHA (OPD Officer, Hector Jimenez,
17 shot the unarmed African American decedent in the back following a traffic stop. Civil case settled
18 prior to trial);

19 f. *Smith, et al. v. City of Oakland*, Case No. C06-07171 MJJ (OPD Officer, Richard Valerga,
20 repeatedly racially profiled Asian women for traffic stops and subjected them to sexual harassment and
21 sexual assault while on duty. Evidence showed that officers failed to complete stop data reports
22 mandated by Task 34, which could have uncovered Officer Valerga's biased policing before a large
23 number of women were victimized);

24 g. *Torry Smith, et al. v. City of Oakland*, C05-04045 EMC (African American parolee was
25 subjected to unreasonable search and seizure, planting of evidence/false reports, false imprisonment and
26 malicious prosecution; multi-million dollar compensatory damage verdict and punitive damages
27 awarded. Case later settled. See, 9th Cir. memorandum opinion, No. 08-15896 and District Court file; a
28 true and correct copy of said memorandum opinion is attached and incorporated herein by reference as
Exhibit 57);

h. *Knapps v. City of Oakland*, Case No. C-05-2935-MEJ (African American Plaintiff was falsely
arrested and maliciously prosecuted by two OPD officers when he was trying to prevent a White
resident from a board and care home from committing suicide by restraining him from running into the
street. Officers assaulted the Plaintiff putting him into a carotid hold, as he was trying to explain the
circumstances. Officers caused Plaintiff to be maliciously prosecuted through a state administrative
hearing and criminal action, both of which resolved in the Plaintiff's favor. Following a bench trial, the
Court awarded Plaintiff compensatory and punitive damages. See, Findings of Fact and Conclusions of
Law, a true and correct copy of which is attached and incorporated herein by reference as Exhibit 74.
The Court modified the Plaintiff's award to remove the punitive damage award against 1 of the 3
officers; but sustained the punitive damage award against the other two officers following post-trial
motions filed by the defendants);

1 i. *Nicole White, et al., v. City of Oakland, et al*, Case No. C09-05743 WHA (African American
2 Plaintiff, Nicole White, suffered serious burns over a large part of her body and permanent scarring when
3 OPD recklessly threw a flash bang grenade inside the home where she was staying without adequate
4 justification. A second African American plaintiff also suffered injuries to a lesser degree).

5 62. By comparison to the police misconduct verdicts and settlements paid by Oakland, the City
6 of San Jose, a much larger City than Oakland, paid a total of only \$7,976,855.06 in police related
7 litigation since 2002, based on data produced to Plaintiffs' counsel by the City of San Jose in response to
8 a public records act request. A true and accurate copy of said data is attached and incorporated herein
9 by reference as Exhibit 79.

10 63. KTVU-TV also examined police misconduct payouts by Oakland, San Francisco and San
11 Jose. It found that amounts paid by the City of Oakland in police related claims far exceeded the
12 amounts paid by San Jose or San Francisco in police misconduct claims. A true and correct copy of the
13 KTVU-TV report is attached and incorporated herein by reference as Ex. 75. Per the KTVU report,
14 Oakland paid \$57 million dollars in police related claims vs. \$28 million by San Francisco and \$8.6
15 million by San Jose during the same time frame examined by the television station. *Id.*

16 64. Attached and incorporated herein by reference as Exhibit 61 is a true and accurate copy of a
17 Joint Case Management Conference Statement (minus attachments) that was filed by the parties on
18 January 19, 2012 [DKT No. 674].

19 65. Attached and incorporated herein by reference as Exhibit 62 is a true and accurate copy of a
20 letter signed by the Mayor, City Administrator and City Attorney to the Court that was attached as
21 Exhibit 5 to the Joint Case Management Conference Statement that was filed by the parties on January
22 19, 2012 (DKT No. 674).

23 66. Attached and incorporated herein by reference as Exhibit 63 is a true and accurate copy of
24 an August 1, 2012, "Police Technology Performance Audit: FY2006-07 Through 2010-11, conducted by
25 the City of Oakland Auditor, that Plaintiffs' counsel downloaded from the City of Oakland's website.
26
27
28

1 67. Attached and incorporated herein by reference as Exhibit 64 is a true and accurate copy of a
2 memorandum by Oakland Police Chief Howard Jordan and a chart purporting to represent the City's
3 implementation status of recommendations made by the Frazier Group in its report concerning the
4 OPD's response to Occupy Oakland on October 25, 2011 (See, Ex. 33). These documents were
5 published by the City of Oakland on June 14, 2012, at the time the City published the aforementioned
6 Frazier Group report and was authenticated by Chief Howard Jordan as part of Exhibit 14 at his
7 deposition taken by me.
8

9 68. Attached and incorporated herein by reference as Exhibit 65 is a true and correct copy of the
10 City of Oakland's response to Plaintiffs' Amended First Set of Interrogatories, Interrogatory No. 104.
11

12 69. Attached and incorporated herein by reference as Exhibit 66, is the Declaration of Donald K.
13 Anders, with Exhibits 1 and 2 attached to said Declaration. These notes were intended to remain
14 confidential by their author. A redacted version of this exhibit is being efiled and the full unredacted
15 version will be lodged with the Court.
16

17 70. Attached and incorporated herein by reference as Exhibit 67 are true and accurate copies of
18 email correspondence between Oakland City Administrator and her staff with Thomas Frazier in
19 reference to the Frazier Group's report. These emails were authenticated as exhibits at the deposition of
20 Thomas Frazier taken by me.
21

22 71. Attached and incorporated herein by reference as Exhibit 68 is a true and accurate copy of
23 excerpts taken from an Alameda County Grand Jury Report for 2010-2011 related to the City of
24 Oakland's Crime Lab backlogs, staffing and funding issues. This report was downloaded by Plaintiffs'
25 counsel from the County of Alameda's website.
26

27 72. Attached and incorporated herein by reference as Exhibit 69 is a true and accurate copy of a
28 New York Times Magazine article entitled, "Oakland, the Last Refuge of Radical America," dated

1 August 1, 2012. *See*, pp. 6-7 for statements attributed to Mayor Jean Quan about Occupy Oakland and
2 her relationship with the OPD.

3 73. Attached and incorporated herein by reference as Exhibit 70, is a true and accurate copy of
4 the OPD's Department General Order (DGO) K-4.

5 74. Attached and incorporated herein by reference as Exhibits 76-77 are the City of Oakland's
6 Response Outlining The NSA-Related Contracts and Errata thereto [DKT Nos. 736-737].

7 75. Attached and incorporated herein by reference as Exhibit 81 is a true and accurate copy of
8 the current Monitor's Report concerning Occupy Oakland that was filed on October 3, 2012 [DKT 746]

9 76. Attached and incorporated herein by reference as Exhibit 82 is a true and accurate copy of a
10 draft of the current Monitor's 11th Quarterly Report. Since this document is considered confidential
11 until published, Plaintiffs are filing it under seal with the Court until it is published.
12

13 77. Attached and incorporated herein by reference as Exhibit 88 is a true and accurate copy of a
14 New York Times Article entitled, "Oakland Police Caught Between Reform and a Crime Surge," dated
15 April 19, 2012. This article states that a former OPD commander, who did not wish to be identified
16 because he was involved in the reforms, said in reference to the NSA, "One of the reasons Oakland is
17 getting hammered so bad is because we goofed off for the first five years...Now we got this new
18 monitor and we're desperate. We're just trying to cram it down everybody's throats."
19

20 78. Attached and incorporated herein by reference as Exhibit 89 are true and correct copies of
21 memoranda written by Chief Howard Jordan in response to the current Monitor's 8th and 9th Quarterly
22 Reports. These memoranda were authenticated at the deposition of Chief Jordan that was taken by me
23 on behalf of the Plaintiffs.
24

25 79. Attached and incorporated herein by reference as Exhibit 90 are true and correct copies of
26 data received from the OPD evidencing the racially disproportionate stops officers perform on racial
27 minorities.
28

1 80. I declare under penalty of perjury that the foregoing is true and correct and based on my
2 personal knowledge, except for the matters stated upon information and belief, and as to those matters, I
3 am informed and believe them to be true and correct. Executed this 4th day of October at Berkeley,
4 California.

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6 _____/S/_____
James B. Chanin

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- Exhibit 1: Negotiated Settlement Agreement (“NSA”)
- Exhibit 2: Amended Memorandum Of Understanding (“Amou”)
- Exhibit 3: Plaintiffs’ Compliance Summary
- Exhibit 4: Current Monitor’s 10th Quarterly Report, July 30, 2012
- Exhibit 5: City Of Oakland’s Nsa/Amou Task Compliance Chart
- Exhibit 6: Plaintiffs’ Task Compliance Chart
- Exhibit 6b: Plaintiffs’ Task Compliance Chart
- Exhibit 7: Current Monitor’s 9th Quarterly Report
- Exhibit 8: Current Monitor’s 8th Quarterly Report
- Exhibit 9: Current Monitor’s 7th Quarterly Report
- Exhibit 10: Current Monitor’s 6th Quarterly Report
- Exhibit 11: Monitor’s 5th Quarterly Report
- Exhibit 12: Monitor’s 4th Quarterly Report
- Exhibit 13: Monitor’s 3rd Quarterly Report
- Exhibit 14: Monitor’s 2nd Quarterly Report
- Exhibit 15: Monitor’s 1st Quarterly Report
- Exhibit 16: Imt’s 14th Quarterly Report
- Exhibit 17: Imt’s 13th Quarterly Report
- Exhibit 18: Imt’s 12th Quarterly Report
- Exhibit 19: Imt’s 11th Quarterly Report
- Exhibit 20: Imt’s 10th Quarterly Report
- Exhibit 21: Imt’s 9th Quarterly Report

- 1 Exhibit 22: Imt's 8th Quarterly Report
- 2 Exhibit 23: Imt's 7th Quarterly Report
- 3 Exhibit 24: Imt's 6th Quarterly Report
- 4 Exhibit 25: IMT's 4th and 5th Combined Quarterly Report
- 5 Exhibit 26: Imt's 3rd Quarterly Report
- 6 Exhibit 27: Imt's 2nd Quarterly Report
- 7 Exhibit 28: Imt's 1st Quarterly Report
- 8 Exhibit 29: 8.14.12 OIG Use Of Force
- 9 Exhibit 30: Excerpts of Deposition of Howard Jordan, Vols. 1 and 2
- 10 Exhibit 31: City of Oakland Further Responses to Plaintiffs' Amended
- 11 First Set of Interrogatories; Exhibits A and B
- 12
- 13
- 14
- 15 Exhibit 32: November 24, 2009 Reporter Transcript, Status Conference
- 16 Exhibit 33: Frazier Group Report, June 14, 2012
- 17 Exhibit 34: City's Press Release Re: Frazier Report, June 14, 2012
- 18 Exhibit 35: Excerpts of Deposition of Deanna Santana
- 19 Exhibit 36: Excerpts of Deposition of Jean Quan
- 20 Exhibit 37: Excerpts of Deposition of Thomas Frazier
- 21 Exhibit 38: Postings from OPD re Mayor Jean Quan and Judge Thelton E. Henderson
- 22 Exhibit 39: Declaration of Jan Gilbrecht
- 23 Exhibit 40: Declaration of Nancy Appel
- 24 Exhibit 41: San Francisco Chronicle Article Regard Keith Batt's Lawsuit Settlement
- 25 Exhibit 42: Institute for Law Enforcement Administration 2001 Ethical Courage Award/K. Batt
- 26 Exhibit 43: Pleasanton Patch Article Re: K. Batt and Cold Murder Case
- 27
- 28

1 Exhibit 44: New York Times Article, November 2000 Re: Riders' Scandal

2 Exhibit 45: 12th Quarterly Monitor's Report – Detroit Consent Decree

3 Exhibit 46: City of Oakland Compliance Matrix for August 2012

4 Exhibit 47: City of Oakland Compliance Matrix for September 2012

5 Exhibit 48: Reporter's Transcript for February 2005 Status Conference

6 Exhibit 49: Reporter's Transcript for September 16, 2010 Case Management Conference

7 Exhibit 50: 13th Bi-Weekly Compliance Update

8 Exhibit 51: Joint CMC Statement filed December 2, 2010

9 Exhibit 52: 27th Bi-Weekly Compliance Update

10 Exhibit 53: Oakland North Article dated October 11, 2011 Re: Chief Batt's Resignation

11 Exhibit 54: Announcement re Assignment of Howard Jordan as Interim Chief of Police

12 Exhibit 55: Declaration , Report and Qualifications of Jeffrey A. Schwartz, Ph.D.

13 Exhibit 56: Monitor's Officer Involved Shooting Investigations Report

14 Exhibit 57: Torry Smith v. City of Oakland, 9th Circuit Memorandum Opinion

15 Exhibit 58(a), (b) and (c) Statistics re Detroit PD

16 Exhibit 59: Oakland City Attorney Annual Reports

17 Exhibit 60: RESERVED

18 Exhibit 61: Joint Case Management Conference Statement, January 19, 2012

19 Exhibit 62: January 19, 2012 Letter to the Court from the Mayor, City Administrator and City Attorney

20 Exhibit 63: City of Oakland Auditor's Report re: Technology

21 Exhibit 64: Memo from Howard Jordan and Compliance Chart re Frazier Group Recommendations

22 Exhibit 65: City's Response to Plaintiffs' Amended First Set of Interrogatories, No. 104

23 Exhibit 66: Declaration of Donald K. Anders

24 Exhibit 67: Emails between City Administrator's Office and Frazier Group

1 Exhibit 68: Alameda County Grand Jury Report, 2011-2012

2 Exhibit 69: New York Times Article re: Mayor Jean Quan/OPD

3 Exhibit 70: DGO K-4

4 Exhibit 71: Reserved'

5 Exhibit 72: Court's Findings re John Smith v. City of Oakland

6 Exhibit 73: Ninth Circuit Opinion in Estate of Amaro v. City of Oakland

7 Exhibit 74: Findings of Fact and Conclusions of Law in Knapps v. City of Oakland

8 Exhibit 75: KTVU Article comparing police misconduct payouts: Oakland, San Jose, San Francisco

9 Exhibit 76: City of Oakland's Response to Court's Order re Outside Contracts/Consultants

10 Exhibit 77: Errata to City of Oakland's Response to Court's Order re Outside Contracts/Consultants

11 Exhibit 78: East Bay Express article re Oakland NSA v. Detroit Consent Decree Compliance

12 Exhibit: 79: Chart prepared by Plaintiffs' Counsel and Public Records Act Information Received from
13 San Jose re Police Misconduct payouts

14 Exhibit 80: San Francisco Chronicle Article Regarding Amaro v. City of Oakland case.

15 Exhibit 81: Monitor's Report re: Occupy Oakland

16 Exhibit 82: Draft of Monitor's 11th Quarterly Report

17 Exhibit 83: Excerpts from 1st IMT Report Re: Detroit Consent Decree

18 Exhibit 84: Reserved

19 Exhibit 85: Excerpts from 11th IMT Report re: Detroit Consent Decree

20 Exhibit 86: Anthony Toribio Email

21 Exhibit 87: Information Re: Detroit Articles, Demographics and Crime Statistics

22 Exhibit 88: New York Times Article re: OPD "Goofing Off" During First Five Years of NSA.

23 Exhibit 89: Chief Jordan's Responses to the Monitor's 8th and 9th Reports

24 Exhibit 90: "Stop Data" Information from OPD Showing Racial Disparity in OPD stops/searches