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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 DELPHINE ALLEN, et al.,
12 Plaintiffs,
13 v.
14 CITY OF OAKLAND, et al.,
15 Defendants.

Case No. C 00-4599 TEH

**DEFENDANT CITY OF OAKLAND'S
DECEMBER 31, 2015 PROGRESS
REPORT PURSUANT TO SEPTEMBER
28, 2015 ORDER REQUIRING
QUARTERLY REPORTS**

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21 Defendant City of Oakland ("City") files the attached progress report pursuant to the Court's
22 September 28, 2015 Order Requiring Quarterly Reports on Arbitrations which provides:
23 "Defendants shall continue to implement these recommendations and shall file quarterly progress
24 reports on or before March 31, June 30, September 30, and December 31 each year. The first such
25 report shall be due on or before **December 31, 2015.**" September 28, 2015 Order at 1:12-16 (ECF
26 No. 1071). The December 31, 2015 progress report is attached hereto.

CITY OF OAKLAND



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PROGRESS REPORT NO. 2

This Progress Report is the City's second Progress Report. The Court has ordered that the City provide quarterly Progress Reports, beginning on December 31, 2015.

The City filed its first Progress Report on September 1, 2015. In that report, we informed the Court that the City had completed most of the recommendations in the Court Investigator's April 2015 report, and that implementation of the outstanding recommendations was well underway. (A copy of the City's September Progress Report is attached for the Court's reference as *Attachment A*.) This report updates the status of the recommendations that the City had not fully implemented when we filed the September report. This report also includes a chart that provides information regarding police arbitration decisions that were issued after we completed the September Progress Report.

The City of Oakland has made substantial and constructive improvements in handling police discipline. We are confident that changes and improvements the City made both prior to and following the Investigator's report have had real and positive results, including more favorable outcomes in police arbitration cases.

Our goal is to implement structural and sustainable changes that will ensure fair, consistent and effective discipline for police officers on an ongoing, long-term basis.

I. Arbitration Decisions Since September 1, 2015 Progress Report

Six police-related arbitration decisions have been issued since we filed the September 1, 2015 report.¹ In all six cases, the arbitrators upheld the City's decision to impose discipline. In three cases, the arbitrators upheld the level of discipline the City imposed. In the other three cases, the arbitrators reduced the level of discipline. Five of the cases involved suspensions and one case involved a termination. Two of the cases involved use of force.

¹ One of the decisions is dated August 27, 2015. However, we include it because we did not receive it in time to include it in the September 1, 2015 report.

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To summarize:

- In three cases, including both of the use-of-force cases, the arbitrators upheld the level of discipline the City imposed.
- In two cases, the arbitrators reduced a suspension to a written reprimand.
- In one case, the arbitrator reduced a termination to a 30-day suspension.

ARBITRATION DECISIONS SINCE SEPTEMBER 2015 REPORT

	GRIEVANT & VIOLATION	CITY'S DISCIPLINE	ARBITRATOR'S DECISION	OUTCOME	DECISION DATE
1	Officer A Performance of Duty (PDRD) ²	1 Day	Upheld City's decision to impose discipline; reduced level of discipline.	Written Reprimand	8-27-2015
2	Officer B Use of Force (TASER deployment)	10 Days	Upheld City's disciplinary decision.	10 Days	9-2-2015
3	Officer C Use of Force (TASER deployment)	10 Days	Upheld City's disciplinary decision.	10 Days	10-28-2015
4	Sergeant D Truthfulness and Harassment	Termination	Upheld City's decision to impose discipline; reduced level of discipline.	30 Days	10-29-2015
5	Officer E Retaliation	5 Days	Upheld City's disciplinary decision.	5 Days	11-23-2015
6	Officer F Failure to Supervise	5 Days	Upheld City's decision to impose discipline; reduced level of discipline.	Written Reprimand	12-7-2015

² PDRD refers to portable digital recording device, commonly referred to as a body camera.

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II. Investigation

- 1) Recommendation: *Department should consider in all cases whether it needs to interview civilian witnesses as part of its investigation, and it must be diligent in its efforts to locate and contact these witnesses. OPD should work with OCA to develop a policy to determine when outside experts should be hired and who will pay for them.*

September 2015 Status:

OPD and OCA are working together to develop a policy to help OPD determine when an investigation would benefit from highly specialized expertise, such as expertise in force science, audio and video enhancement, computer forensics, weapons, or ballistics, as well as how best to assess a potential expert's skill and knowledge.

OCA and IAD currently review cases together, which includes evaluating the availability of civilian witnesses and whether those witnesses should be interviewed, and the questions that should be asked. In addition, OCA has developed a written policy to ensure that IAD is notified when civilian witnesses are identified in a civil lawsuit that corresponds to an ongoing IAD investigation.

September 2015 Projected Time Frame for Completion: December 1, 2015

December 31 Status Update: **Done.** On December 2, 2015 OPD issued a memorandum to IAD entitled "Internal Affairs Division Expert Retention Policy" (*Attachment B.*) OCA and OPD jointly developed the policy. It is designed to assist IAD and its investigators in assessing when to seek an outside expert and understanding how best to select one.

- 2) Recommendation: *Department should reduce turnover in IA by including at least one civilian at a high level of authority within the division. The civilian should be someone who understands both community expectations and police procedure, who has investigative experience, and who has a commitment to collaborate with the OCA on the most serious cases.*

September 2015 Status:

September 1, 2015 Progress Report – City Council's Fiscal Year 2015-2017 budget authorizes funding for a civilian commander of the IAD as of July 1, 2015. The hiring process is underway. Note: the City Attorney, Police Chief and former City Administrator recommended hiring a civilian commander for IAD in the January 2015 joint report.

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September 2015 Projected Time Frame for Completion: City anticipates hiring a senior, civilian manager by October 2015 to assume a high level of authority within IAD. In addition, OPD and City Administration are in the process of meeting and conferring with the OPOA regarding the City's proposal to transition from the current IAD structure to having the civilian manager assume primary oversight of IAD.

December 31 Status Update: **Done.** In October 2015, the City hired a civilian commander for IAD who reports to the IAD captain. The new civilian commander is an attorney who previously worked as legal counsel for the Chicago Independent Police Review Authority; he has never been a sworn officer. He has a high level of authority in IAD to review investigations and policies.

III. Discipline

- 1) Recommendation: *Department should coordinate with the OCA to address outdated rules and policies so they do not undermine the disciplinary process.*

September 2015 Status: OCA and OPD are reviewing the rules and policies that were at issue in the arbitrations covered by the investigation, as well as arbitration decisions that have been issued subsequently. OPD is prioritizing use of force and related policies.

September 2015 Projected Time Frame for Completion: OPD estimates a time frame of 16 to 18 months to update entire policy manual.

December 31 Status Update: OPD continues to work on updating the entire policy manual. OPD is on track to complete the update within the 16 to 18-month time frame projected for completion.

- 2) Recommendation: *Pre-Discipline Report should be changed to avoid creating unnecessary obstacles in the arbitration process. We recommend that in the more serious (or Class I) cases, the Chief meeting in person with the supervisors of the subject officer to consult about the appropriate level of discipline, but that the Department continue to use the existing written Pre-discipline report in less serious cases.*

September 2015 Status: The policy has been changed to avoid creating unnecessary obstacles in the process, and the Monitor/Compliance Director has approved the updated draft policy. Specifically, the policy was rewritten to remove the requirement that the form be utilized at each level of the subject officer's chain of command, and instead requires the form

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from the subject officer's Division Commander or manager following that commander's or manager's consultation with lower levels of the chain. Since this policy revision affected workplace rules and conditions, it required meet and confer with affected unions and associations. Employee Relations is currently handling meet and confers with unions. The process was delayed since all unions were heavily engaged in negotiations at the time the Department was attempting to expedite the policy.

September 2015 Projected Time Frame for Completion:

1. Change written policy: **Done**
2. Implementation of the policy: Awaiting completion of meet and confer process, estimated to be completed by January 2016.

December 31 Status Update:

1. Implementation of the policy: **Done.**

- 3) Recommendation: Department should revamp its Skelly hearing process. Skelly officers should receive training on conducting thorough IA investigations to ensure that their decisions cannot be effectively challenged at the arbitration stage for having been based on insufficient investigation. Skelly offers should be trained and given guidelines on writing detailed Skelly reports. OCA should be made part of the process, particularly in the drafting of letters of intent to discipline. Department should assign all serious cases (those involving at least one Class I allegation) to a Deputy Chief, to the Assistant Chief or to the Chief him or herself.

September 2015 Status: City's Fiscal Year 2015-2017 budget funds an additional Deputy Chief to handle the majority of Skelly hearings, i.e., all discipline of more than five days. This position was filled by a promotion that became effective on August 15, 2015. OCA has historically provided training to OPD's Skelly officers and will continue to do so. Two of OCA's Labor & Employment attorneys are currently working on an updated Skelly officer training, which will be conducted on or before December 1, 2015. Also, a new Administrative Instruction drafted by the City Attorney and signed by the City Administrator specifies how information on police investigations and discipline is to flow to OCA from OPD and Employee Relations. The AI is designed to make OCA a part of the entire disciplinary process.

Projected Timeframe for Completion:

1. OPD should assign all serious cases to Deputy Chief or above: **Done.**
2. OCA should be made part of the process: **Done.**
3. Skelly officers should be trained and given guidelines: Ongoing, done by December 2015.

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December 31 Status Update:

1. *Skelly* officers should be trained and given guidelines: OCA developed a two-part training for the Deputy Chief who handles the majority of *Skelly* hearings. (i.e., all discipline exceeding five days). The training sessions were held in November 2015 and lasted approximately one and a half hours each. The next step is for OCA and the Deputy Chief to administer the training to the rest of OPD's *Skelly* officers, which will be completed by January 22, 2016.

IV. Arbitration

- 1) Recommendation: OCA or outside counsel should request pre-hearing discovery in all significant arbitrations. OCA should seek to amend the MOU to require pre-hearing disclosure of evidence and expert witnesses.

September 1, 2015 Status: The City is not entitled to the union's list of witnesses, experts or documentary evidence under the MOU. OCA has nevertheless begun to request pre-hearing discovery in most cases, and has memorialized this practice in the Arbitration Protocol. The union has agreed to exchange witness lists and exhibits in several cases and has declined to do so in others. OCA likewise has decided in several cases that it was strategically disadvantageous to exchange witness lists and exhibits with the union. When OCA decides not to offer such an exchange, the Arbitration Protocol requires that OCA document the rationale. This is intended to create consistency and to ensure that information exchanges take place as often as possible.

The City is negotiating with the police officers' union and has proposed that the new MOU include a requirement that both sides exchange witness lists and exhibits in every case.

September 1, 2015 Projected Time Frame for Completion: **Done.**

December 31 Status Update: During negotiations with the police officers' union, the City proposed that the new MOU include a requirement that both sides exchange witness lists and exhibits in every case. The union agreed to include a requirement that both sides exchange the names of expert witnesses. In addition, OCA continues to request pre-hearing disclosure of evidence and other witnesses in almost every case, in accordance with OCA's Arbitration Protocol and as discussed in the previous progress report.

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IV. Conclusion

As we advised in our January 20, 2015 report, the City continues to strive to provide the citizens of Oakland the most effective, professional and accountable police force in the nation. We fully embrace and remain committed to the goal of implementing fair and effective discipline, and recognize that consistency and sustainability are paramount. The City has taken serious steps – including before the Court issued its August 14, 2014 order – to improve the disciplinary process for police officers, and many sound procedures are in place. We will continue to diligently and expeditiously implement outstanding measures.

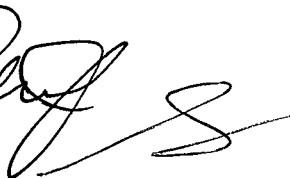
Dated: December 18, 2015



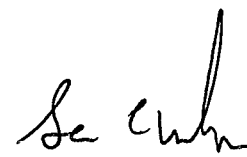
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Libby Schaaf
Mayor



Sabrina Landreth
City Administrator



Sean Whent
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Attachments:

- A. September 1, 2015 Progress Report
- B. Internal Affairs Division Expert Retention Policy

Addendum: Sealed Addendum re: Arbitration Decisions

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