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

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

**Case No. C 00-4599 WHO**  
**JOINT STATUS CONFERENCE**  
**STATEMENT**

Date: October 2, 2017  
 Time: 3:00 p.m.  
 Courtroom 2 – 17th Floor

The Honorable William H. Orrick

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## I. PLAINTIFFS' CURRENT POSITION

1  
2 This is a further status conference concerning the progress of the non-monetary settlement in  
3 the "Riders Litigation" which was approved by the Court on January 22, 2003.

4 This case should have ended in 2008 with a possible extension to 2010. Numerous police  
5 chiefs, mayors, and other officials have promised compliance over the years, often in personal court  
6 appearances. Yet the core requirements of the Negotiated Settlement Agreement, particularly Task  
7 34 Racial Profiling/Fair and Equitable Policing, remain out of full compliance.

8 This does not mean there has been no progress. The Oakland Police Department had a  
9 substantial drop in complaints in the aftermath of the full implementation in the use of body worn  
10 cameras. Uses of Force and Pursuits have shown dramatic declines. There were no Officer  
11 Involved Shootings in 2014 and 2016. All of this was accomplished while crime generally  
12 declined. There is no doubt that the OPD is very different police department than it was at the time  
13 our clients were beaten, falsely arrested and/or were charged for crimes they did not commit.

14 We are not asking for a police department where no mistakes are made. The test of a good  
15 police department is not one that makes no mistakes. The test is how fast those mistakes are  
16 discovered and whether all members, no matter what their rank and status, are held accountable in a  
17 consistent and fair manner when they commit violations of the OPD General Orders and other  
18 relevant regulations.

### 19 **A. The OPD Response to the Swanson Report**

20 The OPD Response to the Swanson Report consists of two parts: an Action Plan for  
21 assessing allegations of OPD criminal conduct in the future and the OPD's position on holding  
22 supervisors and commanders accountable for allegations of misconduct and other failings raised in  
23 the Swanson Report.

#### 24 **1. Action Plan**

25 The Action Plan consists of disaggregating the Swanson Report's recommendations and  
26 promising to implement them in the future. The OPD took the Swanson recommendations seriously

1 and promised specific changes in their regulations and specialized training which they believe will  
2 prevent what, by all accounts, was a complete system failure during the six months prior to the  
3 Court's March 23, 2016 order.

4 When the OPD becomes aware of suspected officer criminal conduct, the critical issues are  
5 (1) the prompt reporting of the suspected misconduct to the District Attorney's Office; (2) the  
6 coordination between CID (Criminal Investigations Division), SVU (Special Victims Unit) and the  
7 Internal Affairs Division in investigating allegations of Officer sexual and other criminal  
8 misconduct; (3) the involvement of the Office of the City Attorney, and (4) the training officers  
9 receive so they can competently investigate and report these allegations. The City and Police  
10 Department made diligent good faith attempts to examine these issues and develop new programs  
11 and protocols to deal with suspected officer criminal conduct. Only time will tell if these efforts  
12 will remedy what the OPD itself has admitted were "failures ...in the investigation" which were the  
13 "result of poor communication, mistaken assumptions, unclear supervisory expectations and lack of  
14 documentation." (City of Oakland's Report re: Court Investigator's June 21, 2017 Report, page  
15 11).

16 **2. Holding OPD members accountable for allegations of misconduct and**  
17 **personnel failures referenced in the Swanson Report**

18 In the Joint Status Conference Statement of July 5, 2017, Plaintiffs' attorneys requested that  
19 the City of Oakland (1) prepare a list of all potential misconduct and/or deficient performance and  
20 procedures identified in the Swanson report; (2) report on whether that conduct was investigated;  
21 (3) give the reason for the failure to investigate said behavior if it was not investigated; (4) identify  
22 the person(s) most responsible for any of the incidents/behavior that should have been investigated  
23 and were not investigated; and (5) state whether the person(s) identified as responsible for the  
24 incidents that should have been investigated and were not investigated would be subject to  
25 discipline. (See Joint Status Conference Statement filed July 5, 2017 pp. 14-15). The City of  
26 Oakland has not disciplined a single supervisor since the Swanson report for conduct specified in

1 that report; has not identified what if any discipline can no longer be imposed because it was not  
2 properly processed during the period mandated by Government Code 3304; and has failed to  
3 identify who, if anyone, was responsible for the failure to investigate allegations of misconduct  
4 referenced in the Swanson report.

5 Instead, the City has stated that:

6 There were not sufficient standard operating procedures available to  
7 provide inexperienced supervisors with guidance, especially for an  
8 unusual situation outside of a supervisor's area of expertise. As a  
9 result, supervisors failed to see or recognize some of the points of  
10 failure during the investigation. It was also noted that assignments  
11 were changed without systems in place to transfer necessary  
12 information to the new supervisor or investigator. Commanders were  
not always given clear expectations about the level of supervision and  
accountability expected of them, nor were necessary resources  
provided upon promotion or assignment to a new position. City of  
Oakland's Report re: Court Investigator's June 21, 2017 Report,  
Page 11.

13 The City further states:

14 Plaintiffs expressed deep concern that the deadline imposed by  
15 Government Code Section 3304 was missed, ignored or otherwise  
16 allowed to run by someone at the Department, such that one or more  
17 OPD Commanders should be investigated and possibly disciplined.  
18 Neither the Swanson Report nor the Department's review facilitated  
19 by Judge Brazil suggests that any commander (or any other  
Department employee) misguided or misinformed the Compliance  
Director or the City Administrator at any time after the Court's March  
23, 2016 Order directing the Compliance Director to use his authority  
to ensure a proper and timely investigation. City of Oakland's Report  
re: Court Investigator's June 21, 2017 Report, page 12.

20 For the record, Plaintiffs' attorneys have never stated that any member of the command staff  
21 intentionally misled anyone after the Court's March 23, 2016 order. However, the fact remains that  
22 the Homicide Lieutenant referenced in the Swanson report provided Officer O'Brien's suicide note  
23 to OPD command staff on September 26, 2015 because it contained "allegations of sexual criminal  
24 misconduct" by "unnamed Oakland Police Officers". (Swanson Report p. 4.) The suicide note  
25 itself detailed Ms. Abuslin's allegations that she had "been involved with many OPD officers while  
26 she was still a minor. (Swanson Report p. 7.) The Swanson Report concluded that the "CID's

1 Investigation was inadequate” (Swanson Report p. 9) and that the OPD did not inform the District  
2 Attorney in violation of Task 28 of the NSA. (Swanson Report, p. 14). It also concluded that the  
3 “IAD’s Investigation was inadequate” (Swanson Report p. 16). Throughout the Swanson Report,  
4 various OPD investigators, supervisors and commanders were singled out as having conducted  
5 wholly inadequate investigations.

6 Despite all of this, the OPD’s Response to the Swanson Report failed to discuss any  
7 individual performance failure or identify any OPD personnel who engaged in conduct warranting  
8 discipline. In fact, it states that “based on the totality of the circumstances, including the facts  
9 elicited through the investigation and in-depth Critical Incident Review, further discipline is not  
10 warranted” (OPD Response to the Swanson Report, p. 14). The OPD Report’s conclusion that the  
11 Swanson Report does not indicate that any Department member ignored misconduct or otherwise  
12 engaged in misconduct after the Court’s March 23, 2016 Order (Id.) fails to note that the Swanson  
13 Report specifically covered the period prior to the Court’s March 23, 2016 order. The Department’s  
14 insistence that the OPD’s conduct was not intentional begs the question as to whether any OPD  
15 officers committed Performance of Duty violations which do not necessarily involve intentional  
16 conduct. The report fails to state if Plaintiffs’ attorneys were correct that deadlines imposed by  
17 Government Code 3304 were missed and if they were, who was responsible for the OPD missing  
18 the deadline. In fact, the OPD never admitted that there was any individual misconduct for the  
19 problems in the investigation identified in the Swanson Report, while agreeing that “the  
20 investigations were initially wholly inadequate and indicative of ineffective and inconsistent  
21 department processes”. (City of Oakland’s Report re: Court Investigator’s June 21, 2017 Report p.  
22 12).

23 While the City now reports “further discipline is not warranted”, they previously told  
24 Plaintiffs’ counsel during a number of conversations that further discipline is not possible because  
25 the time to impose discipline has expired under the deadlines imposed by Government Code 3304.  
26 It is not clear now whether the City has concluded no further discipline is warranted under any

1 | circumstances, or if discipline was warranted, but the time to impose discipline has expired. In any  
2 | event, Plaintiffs' attorneys believe that Government Code 3304 does not prevent the imposition of  
3 | all discipline for the events detailed in the Swanson report.

4 | Plaintiffs' attorneys previously submitted a memo on this subject to the City which they now  
5 | appear to have rejected in its entirety. The memo cited exceptions to the one year rule pursuant to  
6 | Government Code Section 3304 (g) and further stated that under Department General Order M-3,  
7 | the persons authorized by the Chief of Police (and not the Mayor or City Manager) would have had  
8 | the authority to initiate an investigation into misconduct of the CID and IAD supervisors. Therefore,  
9 | the failure of the Mayor, the Monitor, the City Manager, to initiate an investigation of the CID and  
10 | IAD Supervisors is irrelevant. The memo also stated that the mere fact that there was an ongoing  
11 | IAD investigation would not have triggered the commencement of the one-year limitations period  
12 | absent 1) the accrual of a cause of action and 2) the discovery of the misconduct. *See Pedro v. City*  
13 | *of Los Angeles*, 229 Cal.App.4<sup>th</sup> 87 (2014) and *Haney v. City of Los Angeles*, 109 Cal.App.4<sup>th</sup> 1  
14 | (2003).

15 | The memo also argued that given the alleged deficient misconduct investigation by both the  
16 | CID and IAD commanders, persons with authority to initiate an investigation of the CID and IAD  
17 | supervisors' conduct would not have discovered the misconduct through the use of reasonable  
18 | diligence since it was unlikely that the IAD supervisors would have admitted their investigation was  
19 | deficient while it was still ongoing. It was only after the publication of the Swanson report that an  
20 | assessment of whether the IAD supervisors violated any rule that would expose them to discipline  
21 | could be made. Concerning CID, the CID commander was put in charge of the investigation by the  
22 | Monitor in March 2016. The CID commander cannot profit from the fact that he did not report his  
23 | own alleged misconduct. Thus, the statute on the misconduct of the CID and IAD supervisors did  
24 | not begin to run until the Swanson report was published in June 2017.

25 | Furthermore, assuming for the sake of argument that the inquiries by the Monitor, the Court,  
26 | the mayor, the City Manager or investigation by the outside firm hired by the Mayor triggered the

1 one year statute of limitation, there would still be an argument that the investigation should be  
2 reopened notwithstanding the one year statute of limitations because: 1) the Swanson investigation  
3 and report constitutes significant new evidence that is likely to affect the outcome of the  
4 investigation, and 2) the evidence could not reasonably have been discovered in the normal course  
5 of investigation without resorting to extraordinary measures due to the fact it would have required a  
6 parallel investigation of the IAD supervisors at the same time the underlying IAD investigation was  
7 ongoing, thereby disrupting the underlying investigation and potentially preventing its completion  
8 within the one year deadline imposed by Government Code 3304.

9 Finally, even if the Monitor's investigation ordered by the Court is counted as the start of the  
10 investigation, the alleged failure of those in charge of that investigation to "investigate themselves"  
11 prevents those in charge of that investigation to now profit from the mandates of Government Code  
12 3304. *See Estate of Amaro v. City of Oakland*, 653 F.3d 808 (9th Cir. 2011).

13 The OPD and Judge Brazil also agreed with the Swanson Report's conclusion that OPD had  
14 a culture that dismissed Ms. Abuslin, failed to recognize her as a victim and dismissed her as not  
15 being credible. (Id.).

16 Given all the OPD admissions about its systemic flaws and its failure to hold any individual  
17 involved in the investigation accountable through its disciplinary process, it is hard to disagree with  
18 the Swanson Report's conclusion that ...

19 "The inadequacy of the investigation prior to the Court's intervention  
20 raises issues concerning the OPD's compliance with the NSA. It calls  
21 into question the Department's ability to comply with the NSA's  
22 requirements that officer misconduct be adequately disciplined and  
23 that allegations of misconduct be timely reported to the D.A.'s Office.  
The fact that Court intervention was required to ensure OPD  
conducted a thorough investigation and to alert the DA to the  
allegations also casts doubt on whether OPD's reforms are sustainable  
in the absence of court supervision." Swanson Report p. 28.

24 In conclusion, Plaintiffs' attorneys fundamentally disagree with the OPD's decision not to  
25 hold individual supervisors and commanders accountable through the disciplinary process for the  
26 deficiencies identified in the Swanson reports. We are troubled by the OPD's failure to admit that



1 Government Code deadlines for discipline were missed and their failure to hold anyone accountable  
2 for this error. We are concerned how the OPD's new protocols and training will prevent an incident  
3 like the sex scandal from happening again when there is no accountability for this fiasco and no  
4 recognition of individual responsibility.

5 We appreciate Chief Kirkpatrick's willingness to confront this issue even though this  
6 incident occurred in its entirety prior to her becoming Chief of Police. We note that she personally  
7 engaged in one on one meetings with the commanders and supervisors involved in this incident.  
8 Overall, however, we are disappointed with her unwillingness to use the disciplinary process to  
9 investigate, and if appropriate, to hold commanders and supervisors accountable for their failings  
10 during the time covered in detail by the Swanson report. All the policy changes and other after the  
11 fact efforts cannot change the simple fact that the Oakland Police Department (along with several  
12 other police departments in the Bay Area) failed to prosecute the statutory rape of an underage girl  
13 by their own police officers in the absence of court intervention. Furthermore, with the exception of  
14 Chief Whent, who was pointedly not held responsible for all the failures detailed in the Swanson  
15 Report, not a single supervisor or commander has been held accountable for their role in this  
16 incident.

17 The best Plaintiffs' attorneys can say for now is that, going forward, we hope Chief  
18 Kirkpatrick and the OPD will begin an era of accountability where every police officer is judged  
19 and, where appropriate, disciplined by the standards that are equally applied throughout the Oakland  
20 Police Department. In the interim, we cannot agree that the OPD is in compliance with Task 5 and  
21 we support the Monitor/Compliance Director's current view that OPD is not in full compliance with  
22 this NSA Task.

23 While we disagree with the OPD Report concerning the Swanson investigation, we realize  
24 we have other areas to cover in the reform effort that we began when we filed the Allen case almost  
25 seventeen years ago. In that spirit, we will summarize the major issues left for the OPD to attain  
26 compliance with the Negotiated Settlement.

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

2 **1. Task 34**

3 Despite all the uproar about the Swanson Report and the sex scandal, Task 34 remains the  
4 most important aspect of the NSA to both the original Riders clients and the Plaintiffs' attorneys.  
5 128 of the 129 clients in the Allen case were African American. Some of them were beaten, many  
6 were arrested and they collectively served 40 years in jail for crimes they did not do. There is no  
7 doubt that our clients were singled out because of their race. It is therefore imperative that the  
8 maximum effort be continued to make the OPD an example of fair and impartial policing,  
9 particularly in the current political environment.

10 Professor Jennifer Eberhardt has been under contract with the City of Oakland since 2014  
11 and has played an important role in advising the City of Oakland on Task 34 related issues over the  
12 past several years.

13 In one of her earlier reports, Professor Eberhardt found that African Americans have been  
14 disproportionately handcuffed by Oakland Police officers of all races for reasons that have not been  
15 matched by the handcuffing rates of Whites and Asians under similar, if not identical  
16 circumstances. She also found similar disparities in searches. The Oakland Police Department has  
17 made a significant effort to improve its performance in increasing the "yield" of individuals they  
18 stop, meaning that there is an articulable basis for the stop ("intelligence based stop") and/or the  
19 person stopped has a warrant, possesses some sort of contraband or evidence, and/or is arrested.  
20 Plaintiffs' attorneys would like to see an agreed upon definition of an intelligence based stop and a  
21 further report for Doctor Eberhardt on the overall progress of the OPD in this area which focuses on  
22 whether the OPD efforts have had a meaningful impact on the problems identified in her earlier  
23 report. We would particularly like to see if there has been improvement in the issue of disparate  
24 handcuffing rates based on race and if there has been particular progress in the rates involving  
25 young African Americans.

26 More recently, Professor Eberhardt was a co-author of the recently completed first

1 systematic analysis of police body camera footage. (See Stanford News Service June 5, 2017.) The  
2 entire study was confined to 981 traffic stops made by the Oakland Police Department in a single  
3 month. The Stanford researchers demonstrated that white residents were 57 percent more likely  
4 than black residents to hear a police officer say the most respectful utterances, such as apologies and  
5 expressions of gratitude like “thank you”. Meanwhile, black community members were 61 percent  
6 more likely than white residents to hear an officer say the least respectful utterances, such as  
7 informal titles like “dude” and “bro” and commands like “hands on the wheel”.

8 Plaintiffs’ attorneys recently met with Chief Kirkpatrick and discussed this study with her.  
9 We would like to see the officers who were the most disrespectful to African American motorists  
10 identified and given individual training and counseling so that they will learn how they can avoid  
11 this conduct in the future. We would like a training program for all officers so they can recognize  
12 the disparities in the way some officers approach African American motorists and treat everyone  
13 with respect. We would also like Professor Eberhardt to conduct this study again sometime in the  
14 future to see if the training and intervention programs have resulted in a more even handed  
15 approach to all motorists in Oakland.

16 Plaintiffs’ attorneys expect frequent updates as to how the recommendations suggested by  
17 Professor Eberhardt in previous reports have been implemented and what impact they are having on  
18 police conduct in Oakland. Finally, we would like a realistic plan of what compliance with Task 34  
19 looks like. We think the Oakland Police Department has made progress in the areas covered by  
20 Task 34 and deserves an attainable set of goals and programs that will set a path for compliance.

21 **2. Prime**

22 The parties devoted a significant part of the last Joint Case Management Conference  
23 Statement to discussing this issue. (See Joint Case Management Conference Statement Filed July 5,  
24 2017 pp. 8-11 and pp 16-19).

25 Development of Prime will impact compliance with Task 34 by integrating camera footage  
26 into compatible systems which will allow supervisors to view officers’ conduct in multiple settings

1 to identify both potential problems as well as patterns and trends that are useful in both training the  
2 officer and identifying exemplary conduct that can be used to train other officers. The ability to do  
3 this has obvious benefits on risk management, crime investigation, and overall supervision as well.

4 As with Task 34, Plaintiffs' attorneys will be collaborating with the City of Oakland and the  
5 Monitor/Compliance Director to achieve a consensus on realistic goals that will constitute  
6 compliance in this area. When the City of Oakland produces a final plan for when Prime will be  
7 implemented, we expect to have a mutually agreeable compliance plan that can be codified and  
8 hopefully attained by a specific date.

### 9 **3. Consistency of Discipline**

10 Task 45 of the Negotiated Settlement Agreement states that the Oakland Police Department  
11 "shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and  
12 consistent manner".

13 Plaintiffs' attorneys have serious reservations as to whether the Oakland Police Department  
14 is in compliance with this Task given their response to the Swanson report. Despite Chief  
15 Kirkpatrick's willingness to directly involve herself in one on one meetings with the main personnel  
16 involved in the conduct investigated in the Swanson report, and the discipline imposed (largely after  
17 the Court's March 2016 order) on the lower ranking officers directly involved with the victim in  
18 this case, the fact remains that the commanders and supervisors were treated in one manner and the  
19 lower ranking officers were treated in another. This is a problem that has plagued the Oakland  
20 Police Department for years and has often been used by the Oakland Police Officers Association  
21 (OPOA) to influence the outcomes of arbitrations in favor of their clients.

22 Plaintiffs' attorneys are not criticizing the OPOA for defending their clients. We are,  
23 however, concerned with the imposition of fair and impartial discipline by the Oakland Police  
24 Department on all of its members when it is warranted. This includes fair and impartial discipline  
25 of all ranks within the Oakland Police Department and fair and impartial discipline of all OPD  
26 officers regardless of their race or sex. We would like the Monitor/Compliance Director to audit

1 this Task in the near future and to report statistics by race and gender as to whether police officers  
2 are receiving consistent discipline without regard to their gender or ethnic background. We are  
3 hopeful that the Monitor, the City and the Plaintiffs Attorneys can collaborate to implement  
4 whatever changes are necessary to ensure this Task is in compliance with the Negotiated Settlement  
5 Agreement.

6 **4. Task 28**

7 Plaintiffs' Attorneys have previously noted that the Swanson Report stated that the OPD did  
8 not inform the District Attorney of the criminal behavior of a number of its police officers in direct  
9 violation of Task 28 of the NSA. (Swanson Report, p. 14). We do not see how the OPD is  
10 compliance with this task at this time.

11 We think it is a relatively simple matter for the OPD to attain compliance with this Task.  
12 We would support the OPD coming up with a realistic plan to assess compliance with this Task  
13 (The procedures are already largely detailed in the aforementioned Action Plan.), the  
14 Monitor/Compliance Director's approval of this plan, and an appropriate period after which the  
15 OPD will hopefully again be in compliance with this Task.

16 **C. Conclusion**

17 The City of Oakland's Response to the Swanson Report contains some evidence that the  
18 OPD has reflected on the many problems identified in the Swanson report. The OPD has promoted  
19 new protocols that it believes will prevent this problem from reoccurring, or if it does, that it will be  
20 caught and remediated in a timely manner. The Chief and Judge Brazil have directly engaged in  
21 one on one sessions with the major personnel who were directly referenced by Mr. Swanson.  
22 However, the failure to confront individual failings of command staff through the discipline process  
23 is deeply troubling, and prevents Plaintiffs' Attorneys from conclusively believing that this problem  
24 will not reoccur.

25 We have identified the major tasks with which OPD needs to attain compliance in order to  
26 comply with the Negotiated Settlement Agreement. We look forward to working with the parties

1 and the Monitor/Compliance Director in order to bring the OPD in full compliance with the  
2 Negotiated Settlement Agreement.

## 4 II. CITY OF OAKLAND

### 5 A. Introduction

6 A little over a week ago, the City filed the Oakland Police Department Action Plan In  
7 Response to [the] Swanson Report (the “CIR Report”). (Doc. No. 1165). The CIR Report laid out  
8 the Chief’s extensive review of the issues and failings identified in the June 21, 2017 “Court-  
9 Appointed Investigator’s Report on the City of Oakland’s Response to Allegations of Officer  
10 Sexual Misconduct” (the “Swanson Report”). The City will not repeat the findings, conclusions  
11 and assurances made in the CIR Report here. Instead, the City takes this opportunity to assure the  
12 Court, Plaintiffs’ counsel and the community it serves that the filing of the CIR Report is not the  
13 end of its self-examination or its work related to the sexual misconduct scandal. To restore trust  
14 and legitimacy with its stakeholders, the Department must—and will—follow through on full  
15 implementation of the Swanson recommendations and the self-identified improvements detailed in  
16 the CIR Report.

17 At the same time, the City does not intend to lose sight of the tasks it must complete to  
18 achieve full and sustainable compliance with the NSA. Based on the findings and reports of the  
19 Independent Monitor, OPD has been found in compliance with all but three of the 52 NSA-related  
20 tasks: 1) Task 5 (IAD Complaint Procedures); 2) Task 34 (Stop Data); and 3) Task 45  
21 (Consistency of Discipline). In this report, the City will focus on the status of Tasks 5 and 34, as  
22 well as address its implementation of its next generation personnel assessment system—  
23 “Performance, Reporting, Information and Metrics Environment” or “PRIME.”<sup>1</sup> While the  
24

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25 <sup>1</sup> The City files quarterly reports detailing the City’s implementation of the Court investigator’s recommendations  
26 related to Task 45. The City’s most recent quarterly report was filed on June 30, 2017 (Doc. 1147). Additionally, the  
IMT’s most recent assessment of Task 45 (included in last month’s Forty-Fifth Report of the Independent Monitor for  
the Oakland Police Department [Doc. 1162] at pp. 24-26) noted OPD’s compliance with several Task 45 subtasks,

1 development of PRIME is not an NSA-required task, the City recognizes that the successful  
2 implementation of PRIME will support sustained compliance with a number of NSA-related tasks.

3 **B. Task 5 (Complaint Procedures)**

4 As noted in the most recent Monitor's Report (Document 1146), OPD is in compliance with  
5 a number of the Task 5 subtasks, and not all are actively being monitored. Instead, the City's  
6 failure to achieve full, sustained compliance with Task 5 is primarily related to the Department's  
7 handling of the sexual misconduct scandal and the Court's March 23, 2016 Order indicating  
8 irregularities and potential violations of the NSA in IAD investigation 15-0771. (*See* Doc. 1089  
9 [March 23, 2016 Court Order] p. 1 and Doc. 1164 [Monitor's Forty-Sixth Report] at p. 8.) The  
10 Court's March 23, 2016 Order directed the Compliance Director "to use his authority to ensure that  
11 this case and any related matters are properly and timely investigated, and that all appropriate  
12 follow-up actions are taken." *Id.* With the Compliance Director's oversight, the Department's  
13 criminal and administrative investigations resulted in the City's imposition of discipline on twelve  
14 officers (including several terminations and numerous suspensions), and the District Attorney's  
15 criminal prosecution of four officers.

16 Nonetheless, both the Swanson Report and the Department's own Critical Incident Review  
17 found failures in the Department's initial criminal and administrative investigations. In particular,  
18 the Swanson Report made nine specific recommendations for changes to Department policies and  
19 practices to help ensure thorough investigations of alleged OPD criminal member misconduct. As  
20 noted in the CIR Report, the Department has worked diligently to implement the Swanson  
21 recommendations, including those related directly to Task 5 subtasks (*i.e.*, Recommendations 5, 6,  
22 7, 8 and 9). In particular, the Department intends to make significant changes and improvements to  
23 policies and procedures that govern: 1) notification, investigation and review procedures for  
24 criminal investigations into alleged OPD member misconduct; and 2) procedures for Internal

25  
26 including maintenance of an adequate system to document and track discipline and corrective action, and adoption and  
use of a discipline "Matrix" to ensure fairness and consistency of discipline.

1 Affairs (“IA”) investigations involving serious allegations, including increased oversight by IA  
 2 Commanders and mandatory consultation with the Office of the City Attorney. (*See* Doc. 1165 at p.  
 3 7.) Because such policy changes relate to NSA-mandated tasks, they must go through an exhaustive  
 4 review by numerous stakeholders, including the City Attorney, the IMT, Plaintiffs’ counsel and the  
 5 bargaining units representing OPD’s sworn and non-sworn members. Edits by one set of  
 6 stakeholders often trigger another round of review. Nonetheless, as more fully described in the CIR  
 7 Report, the Department believes it is on track to implement *all* nine of the Swanson  
 8 recommendations, as well as several other self-identified policy and procedure changes, before the  
 9 end of October 2017. Training on the policy changes will be provided to OPD personnel within  
 10 weeks of implementation.

11 Accordingly, the City looks forward to reporting its full implementation of the Swanson  
 12 recommendations (and particularly those related to Task 5) at or before the next status conference,  
 13 and working with the IMT to determine what additional steps—if any—must be taken to achieve  
 14 compliance with Task 5.<sup>2</sup>

15 **C. Task 34: Stop Data (And The OPD’s Collaborative Work With Stanford)**

16 OPD is committed to reducing crime through fair, quality policing. An essential part of this  
 17 mission is its obligation to detect, assess and address racial disparities in resulting police data.  
 18 There are profound impacts to the OPD’s relationship with the community it serves when stops,  
 19 stop outcomes or conduct exhibited during stops are influenced, or perceived to be influenced, by  
 20 bias or racial or identity profiling. Accordingly, Task 34 addresses the Department’s collection and  
 21 analysis of stop data for every vehicle stop, field investigation and detention.

22 In addition to the assistance of the IMT, the Department receives significant technological

23 \_\_\_\_\_  
 24 <sup>2</sup> The City acknowledges that in the most recent Monitor’s Report (Document 1146), the IMT’s assessment of Task  
 25 5 included the IMT’s note that OPD failed to include PDRD video as part of the documents provided to the IMT to  
 26 review certain IA cases. *Id.* at p. 8. The City wants to reassure the Court that this failure was not intentional and is  
 easily remedied. Based on the language of the IMT’s document requests and past practices, OPD was under the  
 mistaken impression that the IMT only wanted audio, not video, to review certain IA cases. Nonetheless, the City now  
 understands that the IMT wants OPD to produce PDRD video in all IA cases under review and it will be sure to provide  
 such video in the future.



1 assistance from Stanford University’s SPARQ (Social Psychological Answer to Real-world  
2 Questions) program in developing its systems for collecting and analyzing stop data. As part of its  
3 continuing effort to improve its collection and analysis of stop data, the City engaged Stanford to  
4 review and analyze the reports OPD officers completed for a total of 28,119 stops (which  
5 represented every OPD stop between April 1, 2013 and April 30, 2014). A review of the  
6 Department’s stop data and PDRD led to Stanford’s publication of “Strategies for Change:  
7 Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland,  
8 Calif.” (“Strategies for Change”) in June 2016.<sup>3</sup>

9 The Department’s Task 34 work is vast, but falls into two general categories: 1) monthly  
10 risk management meetings in which stop data is reviewed and analyzed at the area, squad and  
11 officer level; and 2) implementation of 50 recommendations for improving community-police  
12 relations contained in “Strategies for Change”, a number of which relate directly to the collection  
13 and analysis of stop data.

#### 14 **1. Monthly Risk Management Meetings**

15 While other law enforcement agencies collect stop data, and a new state law will soon  
16 require all California agencies to do so, OPD is still an industry leader in its development of models  
17 for the collection and analysis of stop data.<sup>4</sup> During monthly risk management meetings, the  
18 Department uses stop data to examine and assess area, squad and officer performance. These  
19 monthly meetings drive the Department’s review of its policing strategies and policies to address  
20 racial disparities.

21 In particular, the Department’s risk management work and collaboration with Stanford have  
22 produced a new Departmental focus on precision-based and “intelligence-led” policing, as opposed  
23 to uncoordinated and discretionary enforcement. An intelligence-led stop is a stop in which officers

24 \_\_\_\_\_  
25 <sup>3</sup> <https://stanford.app.box.com/v/Strategies-for-Change>

26 <sup>4</sup> See, e.g., Doc. No. 1164 (Monitor’s Forty-Sixth Report) at p. 13 (noting that the development of the stop data process was challenging and time-consuming because of, *inter alia*, “the lack of sufficiently developed models for reference”).

1 possess knowledge which can be linked to an articulable source of criminal intelligence which then  
2 leads to the initiation of a stop.<sup>5</sup> Sample reviews of different types of OPD units and OPD patrol  
3 areas have indicated that a focus on intelligence-led stops may reduce the overall volume of stops—  
4 thus reducing the Department’s impact (or “footprint”) on the community—while improving or  
5 substantiating stop outcomes such as arrest or search recovery rates. Preliminary reviews of  
6 intelligence-led stop data have demonstrated that approximately 26 percent of OPD stops are now  
7 documented as precision-based and intelligence-led.<sup>6</sup>

8 There have been on-going and vigorous discussions with both Stanford and the IMT about  
9 the correct models for analyzing whether the Department’s stop data, which admittedly indicates  
10 significant disparate *impact* (primarily on African-Americans), is also reflective of racial *bias*.<sup>7</sup>  
11 Without an established model to follow, this process is necessarily iterative, and there has not  
12 always been complete alignment between the Department, the IMT and Stanford on whether or how  
13 this goal can be achieved. Nonetheless, OPD acknowledges that the responsibility for Task 34  
14 ultimately rests with the Department itself. Accordingly, the Department will focus its efforts with  
15 the IMT and Stanford on solving this problem during the next several months, and it looks forward  
16 to reporting its further progress to the Court.

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17  
18 <sup>5</sup> By way of example, stopping a vehicle only because it has an expired registration is a “discretionary” traffic  
19 enforcement stop. Stopping the same vehicle for expired registration because it resembles a vehicle reported as stolen  
20 or used in the commission of a crime is an “intelligence-led” stop. As the IMT has reported, whether or not the  
Department’s stops are discretionary or intelligence-led, they are consistently based on probable cause or reasonable  
suspicion. (Doc. 1164 at p. 13 n. 4.)

21 <sup>6</sup> This is a significant improvement. Prior reviews of stop data by OPD’s Office of Inspector General and a  
22 comprehensive review conducted by Stanford were previously unable to identify more than 2 percent of stops as linked  
to criminal intelligence and precision-based strategies.

23 <sup>7</sup> While Stanford’s review of stop data “uncovered evidence that OPD officers treat people of different races  
24 differently”, it “found little evidence that these racial disparities arose from overt bias or purposeful discrimination.”  
25 (See *Strategies for Change* at p. 4). Instead, Stanford’s research “suggests that many subtle and unexamined cultural  
26 norms, beliefs, and practices sustain disparate outcomes.” (*Id.*) OPD has, and will continue to engage in training to  
target such implicit bias. In 2016, OPD provided procedural justice and implicit bias training (with Stanford’s  
assistance) to all officers. Starting next month, the Department will require another round of procedural justice and  
implicit bias training for all sworn staff. While the curriculum for the upcoming training is currently being finalized, it  
will definitely include training in direct response to Stanford’s latest study of OPD body worn camera footage, in which  
Stanford found that officers use “less respectful” language when addressing black drivers during traffic stops.

1           **2. Status of Implementation of the Stanford 50 Recommendations**

2           In order to mitigate disparate racial impacts, Stanford recommended, and the Department is  
3 adopting, “50 evidence-based actions that [OPD] can take to change department cultures and  
4 strengthen police-community ties.” (*Id.*) Stanford’s recommendations are far-reaching and wide  
5 ranging, from research and development into body-worn camera footage and police report narrative  
6 analysis, to providing continuous training opportunities in social tactics.

7                   **a. Implemented Recommendations**

8           Over the past year, OPD has continued to work closely and collaboratively with Stanford to  
9 implement the recommendations. The following 23 recommendations have already been  
10 implemented (some on an ongoing basis), and many more are in progress.<sup>8</sup>

11                                   **Measure What Matters**

#	Recommendation
1	Continue collecting stop data
2	Add a field on the stop data form to capture stop data form to capture squad information
3	Add a field on the stop data form to capture squad sergeant information
4	Update the stop data form as needed
5	Standardize, track and analyze crime-related communications provided to officers

18                                   **Leverage Body-Worn Camera (BWC) Footage**

6	Add a field on the stop data form regarding BWC usage
7	Tag BWC footage [to allow association of the relevant BWC footage with each stop in the database]
10	Use BWC footage to evaluate policy compliance

25           <sup>8</sup> Further details underlying the recommendations and their purpose can be found on pp. 43-57 of Strategies for  
26 Change.

1	<b>Make Data Accessible</b>	
2	16	Improve [IT] systems for backing up and accessing BWC footage
3	<b>Collaborate with Data Partners</b>	
4	18	Partner with outside researchers to analyze and use data
5	19	Partner with outside researchers to conduct high quality studies
6	<b>Improve Feedback Channels</b>	
7	22	Use complaint data more effectively
8	<b>Train Officers in Social Tactics</b>	
9	30	Hire a training coordinator [recommended tasks assigned to existing personnel]
10	<b>Increase Positive Contact With the Community</b>	
11	32	Enhance the capacity of Community Resources Officers
12	35	Encourage out-of-uniform contact with communities [such contacts have so far included
13		OPD participation in community-based “barbershop” forums and “living room
14		meetings”]
15	<b>Enhance Risk Management</b>	
16	41	Continue risk management meetings [held monthly, and examines stop data by area,
17		squad and officer]
18	42	Identify outlier officers
19	43	Monitor and reduce time pressure
20	44	Monitor and reduce stress and fatigue
21	45	Identify factors associated with high- and low-performing squads
22	46	Review handcuffing policies [new policy published June 13, 2017, after review by IMT,
23		Plaintiffs’ counsel, Stanford and OPOA]
24	48	Review use of severe legal language [reviewed officer inquiries concerning probation
25		and parole status; as a result, will be revising the department’s search policy]
26	50	Analyze data for trends over time [ongoing]

1                                   **b.     Next Steps In Progress**

2             The Department is committed to working with Stanford to implement the remaining  
3 recommendations. A number of the more technologically complicated recommendations (*i.e.*, 11,  
4 12, 13, 14, 15 and 20) are tied to development of cutting-edge stop data analytics (Stanford is  
5 developing), and their post-development integration with the OPD’s electronic personnel  
6 assessment system “PRIME 2.0” (discussed further below). In the meantime, OPD is systematically  
7 working to implement the remaining recommendations. In anticipation of reporting to the Court on  
8 a regular basis, the Department would like to highlight five recommendations that it intends to  
9 finish implementing within the next 90-120 days. They include:

#	<b>Recommendation</b>
21	<p>Create new ways for officers to give feedback to command staff</p> <p>Details: Officers receive both informal and formal feedback from their supervisors and commanders on a regular basis. OPD is in the process of finalizing several new mechanisms to allow officers to provide feedback up the command chain, including monthly squad meetings, departmental surveys and comment cards (which can be submitted anonymously). The squad meetings will be facilitated by Sergeants and seek affirmative feedback on a number of topics, including, but not limited to, policy revisions, technology/equipment needs, community interactions and relationship building, and critical incidents.</p>
33	<p>Require squad-based community projects</p> <p>Details: Every OPD patrol squad (30+) will be required to develop and participate in at least one community-based project in their usual area of enforcement on an annual basis. The squads will be required to develop the project themselves, soliciting input from local residents and holding an introductory meeting with local residents to introduce and discuss the selected projects. The squad will submit a description and</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26</p>	<p>plan for its proposed project, which must be approved by the Area Commander. While OPD intends to take guidance from community members themselves, they anticipate that such projects could include neighborhood clean-up projects (such as graffiti and trash removal), food drives and safety and awareness seminars. The Department intends to roll out forms and training starting this process before the end of this year.</p>
<p>35</p>	<p>Hold monthly relationship-building meetings</p> <p>Details: OPD officers have traditionally participated in “living room” meetings when requested by residents, as well as monthly Neighborhood Crime Prevention Council meetings. OPD will be expanding and formalizing the “living room” meeting program. The meetings will bring community members together with OPD officers and commanders to identify specific problems, identify solutions and measure impact/success. The first meeting will be held in October 2017, and will be facilitated by long-time Oakland City Councilmember Desley Brooks, who is also Chairperson of the Council’s Public Safety Committee.</p>
<p>36</p>	<p>Provide business cards for every investigative consensual encounter, detention, and community contact</p> <p>Details: OPD is in the process of printing and distributing business cards for all OPD officers to share during encounters with community members to facilitate further contact and communication.</p>
<p>37</p>	<p>Show more care in high-crime areas</p> <p>Details: Stanford specifically recommended that OPD officers make their presence known to residents in areas where shots have been fired to ensure community safety and to let residents know that OPD is aware of and investigating the incident. Canvassing officers will be leaving forms at the residences of individuals who they could not personally contact, notifying the residents of the investigation and providing them with OPD’s phone numbers (including the anonymous tip line).</p>

1 At the next Case Management Conference, the City looks forward to reporting on the successful  
2 implementation of these five recommendations (and perhaps more), as well as identifying the next  
3 set of recommendations to be implemented.

4 **D. Implementation of PRIME 1.0 and Development of PRIME 2.0**

5 Finally, while the City has been found in compliance with Tasks 40 (IPAS) and 41 (Use of  
6 IPAS), the City recognizes that the Monitor and the Court have raised concerns about the City's  
7 development and implementation of its next generation personnel assessment system—"PRIME"—  
8 which has replaced IPAS. *See, e.g.*, Doc. 1128 (Monitor's Fortieth Report) at p. 22 (noting that  
9 OPD continues to meet the requirements of Task 41, but expressing concern that the development  
10 of PRIME has failed to focus on "the use of the new system to enhance risk management"). The  
11 City provided an update to the Court regarding the implementation of PRIME 1.0 and the  
12 development of PRIME 2.0 in the July 2017 Joint CMC Statement, including its assurance that  
13 PRIME 2.0 will include four key components of interest to the Plaintiffs' counsel and the IMT:

- 14 1. Integration of a new training management system, which will track officers' complete  
15 training history from the Academy to separation from the Department and make that data  
16 immediately accessible to supervisors;
- 17 2. Integration of a new OPD Personnel Database System to, *inter alia*, track all sworn and  
18 civilian funded positions and personnel assignments in real-time;
- 19 3. Integration of body-worn camera footage to allow immediate review of stops, arrests,  
20 and uses of force; and
- 21 4. Integration of next generation stop data processes and analytics currently being  
22 developed in collaboration with Stanford.

23 As noted in the last Joint Case Management Conference Statement filed in July, the City  
24 does not believe that these further innovations are necessary for continued compliance with Tasks  
25 40 and 41. They nevertheless reflect the OPD's commitment to continually improving performance  
26 and reaching its goal of becoming a model law enforcement agency.

### 1           **III. INTERVENOR, OAKLAND POLICE OFFICERS ASSOCIATION**

2           Intervenor, Oakland Police Officers Association ("OPOA"), continues to actively engage in  
3 the collaborative efforts to fully implement the terms, conditions and spirit of the reforms set forth  
4 in the NSA. In keeping with its long-standing commitments, the OPOA has been actively involved  
5 in specific efforts to assist Chief Kirkpatrick's effort to address the concerns and recommendations  
6 of the Swanson Report. Moreover, the OPOA has specifically acted on Judge Henderson's  
7 admonitions at the last Case Management Conference on July 10, 2017.

8           Intervenor acknowledges the detailed and comprehensive response of the Department to the  
9 concerns raised in the Swanson Report as specifically enumerated in the "Oakland Police  
10 Department Action Plan in Response to Swanson Report" dated September 15, 2017. ("CIR  
11 Report", Doc. No. 1165.) After the latest CMC, the OPOA committed the organization and its  
12 members to fully assist Chief Kirkpatrick and her command staff as they embarked on a broad  
13 review and analysis of the "issues and failings" identified in the Swanson Report. To the extent that  
14 involved members were drawn into the Department's analysis and review, those that contacted the  
15 OPOA, were strongly encouraged to engage in an unequivocal commitment to Chief Kirkpatrick's  
16 efforts. While the OPOA had limited knowledge of the review process, the OPOA is satisfied that  
17 all members had been fully cooperative and committed to achieving the goals of Chief Kirkpatrick  
18 and her command staff relative to her review.

19           The Department Action Plan references various policies that have been and will be  
20 submitted to the OPOA as part of the meet and confer process. Although the OPOA has not  
21 received all the proposed policies, those that have been tendered, have been vetted through the  
22 process and approved by the OPOA. The OPOA looks forward to reviewing additional proposals  
23 once they have been vetted by the IMT and Plaintiffs' counsel.

24           The OPOA was encouraged by the degree of introspection and analysis identified in the CIR  
25 Report. Moreover, the acknowledgement of deficiencies and action plan addressing those  
26 deficiencies provides ample room for optimism.



1           The Court will recall that at the CMC before Judge Henderson, he specifically took the  
2 opportunity to admonish counsel for the OPOA to relay to the membership his desire that they  
3 support the efforts of Chief Kirkpatrick to embrace the NSA. In response, Barry Donelan the  
4 president of OPOA and Rocky Lucia as OPOA legal counsel authored a member email that was  
5 distributed to all members of the OPOA on August 31, 2017. A copy of one of the actual emails  
6 (redacted only to eliminate the actual member name and identifying email addresses), is attached  
7 hereto as Exhibit A.

8           The email was met with favorable responses from those members responding to President  
9 Donelan. There has been virtually no negative criticism's or objections to the email itself or the  
10 message contained therein.

11           Finally, Exhibit A was obviously sent in response to the admonition of Judge Henderson, yet  
12 it represents the long-standing commitment of the OPOA, and its members to embrace the terms,  
13 conditions and spirit of the NSA.

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1 The OPOA looks forward to continuing the working with Chief Kirkpatrick in her efforts to  
2 bring the Department into full compliance with the NSA and restore the confidence of the citizens  
3 of Oakland in its Police Department.  
4  
5

6 Dated: September 25, 2017 BARBARA J. PARKER, City Attorney  
7 OTIS McGEE, JR., Chief Assistant City Attorney  
8 RYAN G. RICHARDSON, Special Counsel  
9 KIMBERLY A. BLISS, Supervising Deputy City Attorney  
10 JAMILAH A. JEFFERSON, Senior Deputy City Attorney

11 By: /s/ Barbara J. Parker  
12 Attorneys for Defendants  
13 CITY OF OAKLAND, et al

14 Dated: September 25, 2017 JOHN L. BURRIS  
15 Law Offices of John L. Burris

16 By: /s/ John L. Burris  
17 Attorney for Plaintiffs

18 Dated: September 25, 2017 JAMES B. CHANIN  
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20 By: /s/ James B. Chanin  
21 Attorney for Plaintiffs

22 Dated: September 25, 2017 ROCKNE A. LUCIA, JR.  
23 Rains Lucia Stern St. Phalle & Silver

24 By: /s/ Rockne A. Lucia, Jr.  
25 Attorney for Intervenor  
26 OAKLAND POLICE OFFICERS ASSOCIATION

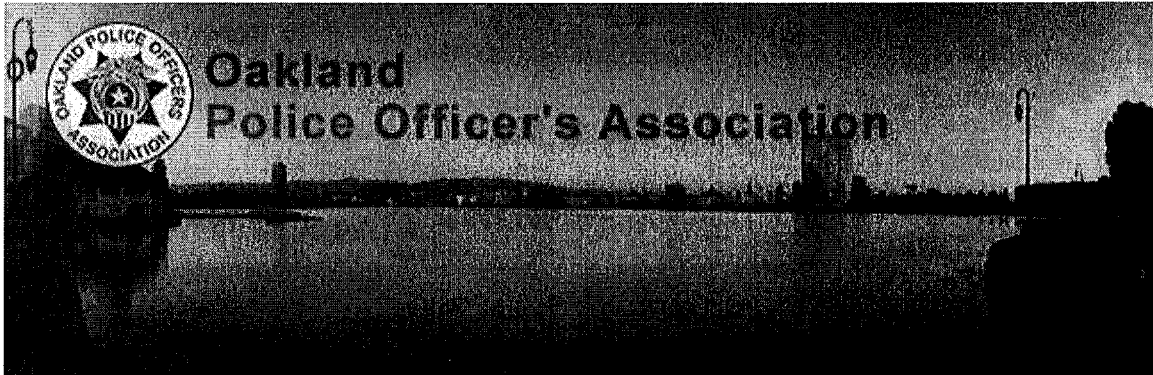
# **EXHIBIT A**

From: Barry Donelan [mailto:[\*\*\*\*\*]]

Sent: Thursday, August 31, 2017 7:22 AM

To: [Members of OPOA]

Subject: A Message from Barry & Rocky Regarding the Negotiated Settlement Agreement



31 August 2017

Member Alert

Dear [*\*Member*],

As most of you know, a few weeks ago there was a hearing in federal court regarding the status of the NSA and the Department's compliance with its terms. In addition, most of you know that Judge Thelton Henderson has been the Federal District Court judge assigned to the case. After a long career on the bench, Judge Henderson retired last month. The OPD NSA case has now been assigned to Federal District Court Judge William Orrick who will maintain oversight of NSA implementation.

At his final NSA hearing, Judge Henderson, heard from all the parties in the case. As an intervenor in the case, the OPOA had an opportunity to address the Court and convey our position on the role and perspective of the OPOA membership in securing compliance with the NSA. The OPOA assured Judge Henderson that the membership of the OPOA has at all times been, and remains, fully committed to cooperating with the City and the Department to become fully compliant with the NSA.

As most of you can imagine, the event of last year's sex scandal was at the forefront of the discussion at the hearing. The Independent Monitoring Team and the Judge expressed concern over the way the Department dealt with these issues. Prior to the hearing, there was some concern that the Judge would

issue contempt citations or possibly consider the imposition of receivership. Judge Henderson confirmed that those options were available to him.

The OPOA took the position that rather than contempt proceedings or receivership, the Court should defer to Chief Kirkpatrick on the response to the criticisms of the Department and the handling of the scandal. Specifically, we urged the Judge to give Chief Kirkpatrick an opportunity to take the actions that she deemed appropriate. After hearing from all the parties, Judge Henderson gave Chief Kirkpatrick the authority to exercise her discretion in dealing with the issue.

However, Judge Henderson went on to admonish all parties, including the membership of the OPOA, that he was very concerned about the developments and fully expected everyone to cooperate with Chief Kirkpatrick in moving the Department toward full compliance with the terms of the NSA. Judge Henderson offered the following admonishment to all those in his courtroom:

*"From what I've seen and heard, Chief Kirkpatrick is capable of providing the necessary moral compass for the Department and City moving forward, and defendant's portion of the Joint Statement says all the right things.*

***And I do want to say that I hope that, Mr. Lucia, you will pass the word that guys on the street have to work with the Chief. That's the most important part of this, and I hope that message resounds from the top to the bottom of the association. I leave you in the capable hands of Judge William Orrick to make sure that the necessary actions are taken."***

In keeping with Judge Henderson's instruction, we are writing again to convey his message to you directly. We remind all OPOA members of our collective responsibility to continue to work collaboratively with Chief Kirkpatrick to obtain full compliance with both the letter and spirit of the NSA. It is expected by Judge Henderson, the leadership of the OPOA, and most importantly the residents of Oakland whom we have all sworn to serve and protect.

Take care of one another and stay safe

Barry Donelan  
President  
Oakland Police Officers Association

Rocky Lucia  
OPOA Association Counsel  
Partner Rains Lucia Stern



These emails are for OPOA members only. You are receiving this email because you have signed up for them. The OPOA will not sell your email address. The OPOA reserves the right to remove email address from this service. Go to [\*\*\*\*\*] to sign up. You must show you are a current member of the OPOA. Don't forget to add [\*\*\*\*\*] and [\*\*\*\*\*] to your address book so we'll be sure to land in your inbox!

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Oakland Police Officers' Association, OPOA, 555 5th Street, Oakland, CA 94607

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