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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,
Plaintiffs,
v.
CITY OF OAKLAND, et al.,
Defendants.

MASTER CASE FILE
NO. C00-4599 TEH

[REDACTED] ORDER RE:
SEPTEMBER 22, 2011 STATUS
CONFERENCE

The next status conference in this case is scheduled to occur on September 22, 2011, with the parties' joint statement due on September 15, 2011. To ensure that the status conference is productive, the Court now orders the parties to address the following issues in their joint statement, and to come prepared to discuss these issues with the Court:

1. Reinstatement of Officer Hector Jimenez. The City appears to have been largely silent about the reinstatement of Officer Jimenez, [REDACTED]

[REDACTED]. While Defendants may be unable to overturn the arbitrator's decision that the shooting was justified and that the Department did not have just cause to terminate Jimenez's employment,¹ Defendants shall address whether they have plans to return Officer Jimenez to patrol duty or some other assignment. If Defendants question the expertise of the arbitrator who decided this case, they shall also explain why this particular arbitrator was selected and what steps they are taking to ensure that future arbitrations are submitted to individuals whom they believe to be qualified to decide force-related issues.

2. "Operation Summer Tune-Up." Efforts to promote public safety are laudable, but Defendants must explain the use of the word "tune-up," particularly when used in the context

¹The Court makes no legal determination on this issue.

1 of an initiative to “clean up the streets” by targeting probationers and parolees. Such a term
2 harks back to the incidents that brought about this case over ten years ago, and it indicates
3 that, as much as Defendants assert the culture has changed, Defendants continue to fail to
4 understand or appreciate the purpose of the negotiated reforms.

5 3. Whether the August 4, 2011 court verdict against an Oakland police officer in
6 *Smith v. City of Oakland*, Case No. 07-6298 MHP, has prompted further review of a case that
7 the Court has been informed resulted in [REDACTED] determination by the Internal Affairs
8 Division. Following a bench trial, a federal district judge concluded, by a preponderance of
9 the evidence, that damages should be awarded for violation of two individuals’ civil rights,
10 yet the Department found [REDACTED]
11 [REDACTED]. This highlights potential inadequacies in the Internal Affairs process
12 and also raises a question as to whether Department policies allow for the re-opening of
13 investigations if new information, including evidence presented during a judicial proceeding,
14 is uncovered.

15 4. The – at least to the Court – alarming numbers of Level 4 uses of force. The Court
16 shares the Monitor’s concern about the high number of Level 4 uses of force, especially
17 given the apparent over-use of pointing a firearm and the correlation that may exist between
18 Level 4 uses of force and officer-involved shootings. Defendants shall report how, if at all,
19 they are addressing this issue. The Court does not expect such a response to include the
20 hiring of an outside person to review the reports in an attempt to argue against the monitoring
21 team’s conclusion that the pointing of firearms was not necessary in all reviewed instances.
22 This would be both a waste of scarce resources and unnecessary, as the Chief of Police has
23 already acknowledged the need for improvement in this area.

24 5. The process by which independent reviews are sought where it is determined that a
25 conflict of interest exists. For example, the Court understands that the Department believes
26 there is an internal conflict of interest regarding a January 26, 2011 officer-involved shooting
27 and is in the process of assembling, or may have already assembled, an outside panel to
28 review the incident in question. The Court seeks a better understanding of how the City

1 determines whether a conflict exists and the criteria used by the City to select panel members
2 when it determines that external review is required.

3 All of these issues have a direct impact on compliance with the negotiated reforms in
4 this case. They are indications that Defendants have yet to fully understand or appreciate the
5 spirit of the reforms, and signs that the moral compass of the Department continues to need
6 correction. The Court draws the parties' attention to these particular issues to provide a
7 focus for the upcoming status conference. The parties should, of course, also raise any other
8 issues significant to compliance, keeping in mind that the Court remains interested in
9 substance over rhetoric, and actions over promises, particularly as we approach what will
10 hopefully be the last stage of Court monitoring in this case.

11 The Clerk shall serve a copy of this order on counsel for Plaintiffs, Defendants, and
12 Intervenor Oakland Police Officers' Association ("OPOA"), as well as on the Monitor. The
13 Court is initially filing this order under seal in case any public safety or privacy concerns are
14 raised by sharing information that may not already be public. The parties and OPOA shall
15 meet and confer and file a joint statement, on or before **September 2, 2011**, addressing
16 whether any part of this order should be redacted before it is filed in the public record, as
17 well as whether any portion of the status conference and joint status conference statement
18 should be sealed. If their response contains any sealable information, the unredacted
19 document may be filed under seal, but a redacted version must be filed in the public record.
20 The Court will then consider the parties' comments in determining whether to redact this
21 order before filing it in the public record.

22
23 **IT IS SO ORDERED.**

24
25 Dated: 08/25/11



26 THELTON E. HENDERSON, JUDGE
27 UNITED STATES DISTRICT COURT
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