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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN FRANCISCO DIVISION**

27 DELPHINE ALLEN, et al.)
28 Plaintiffs,)
v.) **Case No. 00-cv-04599 WHO**
CITY OF OAKLAND, et al.,) **JOINT CASE MANAGEMENT**
Defendant(s).) **STATEMENT**
Date: January 24, 2023
Time: 3:30 p.m.
Courtroom 2, 17th Floor (Virtual)
Hon. William H. Orrick

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PLAINTIFFS' STATEMENT

PLAINTIFFS' CURRENT POSITION

The Independent Monitor for the OPD has issued one NSA Sustainability Period Report since the last Case Management Conference statement. This sustainability period involves the monitoring of the “last remaining and most critical Negotiated Settlement Agreement Tasks: 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45.” (Dkt. 1525, p. 2)

According to the Second NSA Sustainability Period Report of the IMT, OPD is in compliance with ten of these eleven Tasks:

1. Task 2 (Timeliness Standards and Compliance with IAD Investigations –in compliance when most recently assessed by the IMT in the 79th Report and in compliance per the First NSA Sustainability Period Report);
2. Task 20 (Span of Control – in compliance per the draft Second NSA Sustainability Period Report);
3. Task 24 (Use of Force Reporting Policy – in compliance per the draft Second NSA Sustainability Period Report);
4. Task 25 (Use of Force Investigations and Report Responsibility – in compliance per the draft Second NSA Sustainability Period Report);
5. Task 26 (Force Review Board (FRB) – in compliance per the draft Second NSA Sustainability Period Report);
6. Task 30 (Executive Force Review Board (FRB) – in compliance per the draft Second NSA Sustainability Period Report);
7. Task 31 (Officer-Involved Shooting Investigations Review Protocol) – in compliance per the draft Second NSA Sustainability Period Report);
8. Task 34 (Stop Data – in compliance per the draft Second NSA Sustainability Period Report);
9. Task 41 (Use of Personnel Assessment System (PAS) and Risk

1 Management – in compliance per the draft Second NSA Sustainability Period
2 Report)
3 10. Task 45 (Consistency of Discipline – this was in partial compliance during
4 the First NSA Sustainability Period Report and was deemed in full
5 compliance during the period covered draft Second NSA Sustainability Period
6 Report.)

7
8 As of this writing, OPD is not in compliance with one NSA task:

9 1. Task 5 (Internal Affairs Division (IAD) Complaint Procedures – in
10 compliance when assessed by the IMT in the 79th Report, but “Deferred” in
11 the First NSA Sustainability Period Report and deemed “not in compliance”
12 according to the Second NSA Sustainability Period Report.)

13
14 Plaintiffs’ will outline their concerns regarding specific NSA tasks, as well as
15 developments that impact multiple NSA tasks, below, with specific emphasis on
16 Tasks 5 and 45, which will determine whether OPD is able to achieve full
17 compliance with the NSA and/or continue with the Sustainability Period that is
18 currently scheduled to end in May of 2023.

19 **I. Task 2 (Timeliness Standards and Compliance with IAD**
20 **Investigations)**

21 Task 2 requires that the Internal Affairs Department (IAD) of the OPD
22 complete internal investigations in a timely manner. This task was inactive from
23 2015 to July 2019, before falling out of compliance in the 62nd IMT Report. Task 2
24 remained out of compliance until February 2022, when OPD once again met the
25 mathematical threshold required for compliance.

26 OPD policy requires that “at least 85% of Class I misconduct investigations
27 and at least 85% of Class II misconduct investigations must be completed within
28 180 days to be considered timely.” Per DGO M-03, Class I offenses “are the most

1 serious allegations of misconduct and, if sustained, shall result in disciplinary
2 action up to and including dismissal and may serve as the basis for criminal
3 prosecution.”

4 The IMT reviewed 26 Class I misconduct cases during the period covered by
5 the First OPD Sustainability and determined that 25 of these cases were completed
6 in a timely manner. This represented a 96% timely-completion rate, which put
7 OPD above the 85% threshold required for compliance with NSA Task 2. During
8 the period covered by the Draft Second OPD Sustainability Report, the IMT
9 reviewed 26 Class I misconduct cases, and determined that all 26 of these cases
10 were completed in a timely manner. This 100% completion rate speaks for itself
11 and is an unequivocal success for the Department.

12 Similarly, of the 74 Class II cases reviewed by the IMT during the period
13 covered by the Draft Second OPD Sustainability Report, 72 were in compliance with
14 established timelines. This represents a 97% timely completion rate and is also a
15 substantial improvement from the reporting period immediately preceding the
16 Sustainability Period, when the OPD completed just 92%, 82%, 84%, and 82% of
17 Class II investigations in a timely manner.

18 The numbers here are unequivocal: OPD has built upon its progress and
19 remains comfortably above the NSA-mandated numerical thresholds required for
20 compliance with Task 2. However, it is not lost on Plaintiffs’ attorneys that this
21 very same Internal Affairs Division, including the Captain ultimately responsible
22 for the Department’s recent progress on Task 2, are central to OPD’s catastrophic
23 failures regarding Task 5, outlined below.

24 **II. Task 5 (Complaint Procedures for IAD)**

25 Task 5 pertains to Complaint Procedures for the Internal Affairs Division,
26 and consists of several subtasks, all of which the IMT had previously found in
27 compliance, including:

- 28 • Task 5.1, which requires that when a citizen wishes to file a complaint,

1 the citizen is brought to a supervisor or IAD, or a supervisor is
2 summoned to the scene.

- 3 • Task 5.2, which requires that if there is a delay of greater than three
4 hours in supervisory response, the reason for the delay must be
5 documented.
- 6 • Task 5.3, which requires that where a complainant refuses to travel to
7 a supervisor, or wait for one, personnel make all reasonable attempts
8 to obtain specific information to assist in investigating the complaint.
- 9 • Task 5.4, which requires that specific information be documented on a
10 complaint form and submitted to the immediate supervisor or, in
11 his/her absence, the appropriate Area Commander.
- 12 • Task 5.5, which requires that the supervisor or Area Commander
13 notify Communications and forward any pertinent documents to IAD.

14 On March 23, 2016, the Court issued an Order indicating that irregularities
15 and potential violations of the NSA occurred in IAD investigation 15-0771. Multiple
16 officers were ultimately terminated and disciplined in that matter, which involved
17 the widely reported sexual exploitation of a minor. OPD's calamitous handling of
18 the ensuing investigation led to this Court to appoint an outside firm to issue a
19 highly critical report which contributed to the departure of the then-Chief of Police.

20 In the years since this sex scandal and the resultant Swanson Report, the
21 IMT had focused on subtasks 5.15 to 5.19 and subtask 5.21, which address the
22 quality of completed IAD investigations. The IMT determined that subsequent IAD
23 investigations improved to the standards mandated by the NSA and, in February
24 2022, OPD reattained full compliance with Task 5. It appeared that OPD had made
25 real, sustainable progress regarding Internal Affairs Investigations.

26 However, the First OPD Sustainability Report moved the status of Task 5
27 from "in compliance" to "deferred compliance." Plaintiffs' attorneys noted their
28 concerns about OPD backsliding on this all-important Task during the October 2022

1 Case Management Conference and expressed grave concerns about the IMT's note
2 that "two disciplinary matters were referred to an outside firm for further
3 investigation." (Draft First Sustainability Report, p. 9).

4 It was thus extremely concerning that the IMT has determined that OPD is
5 no longer in compliance with Task 5 as of the draft Second OPD Sustainability
6 Report. Referring to "certain internal matters [that] were referred to outside
7 counsel for investigation", the IMT reports that "conclusions to date are troubling
8 and call into question the integrity of the internal investigatory process." (draft
9 Second IMT Sustainability Report, p. 9)

10 Plaintiffs' attorneys first became aware of the details of this investigation on
11 January 18, 2023, when the "Conclusions and Recommendations Re: Vehicle
12 Collision and Elevator Discharge Incidents" drafted by the independent law firm,
13 Clarence Dyer, & Cohen LLP (Clarence Dyer, & Cohen Report), were filed in the
14 docket and publicly disclosed. Dkt. 1564.

15 This document echoes some of the catastrophic failures that plagued OPD at
16 earlier points in the NSA process and affirms the IMT's conclusion that OPD is out
17 of compliance with Task 5. The Clarence Dyer & Cohen Report documents
18 definitive, comprehensive, and pervasive cultural and systemic problems within
19 Department, as well hugely significant failures by individuals in the OPD command
20 staff.

21 On March 25, 2021 an OPD Sergeant was driving an OPD-issued vehicle out
22 of a parking garage in San Francisco. His dating partner, a subordinate OPD
23 officer, was also in the vehicle. Video evidence shows that the vehicle operated by
24 the OPD Sergeant struck a parked civilian vehicle, ripping off the bumper. The
25 OPD Sergeant driving this vehicle stopped for approximately 4-5 seconds after the
26 impact, then drove away from the scene. This incident was never reported by the
27 OPD Sergeant or his OPD Officer dating partner, and OPD only became aware of
28 the incident after the City of Oakland received an insurance claim caused by the

1 damage caused by the OPD Sergeant and captured on video.

2 After an OPD Lieutenant was provided with this video, that Lieutenant
3 shared and viewed the video with the OPD Sergeant who was operating the vehicle
4 during the collision and “instructed the sergeant to make a report of the collision to
5 the San Francisco Police Department because the incident took place in San
6 Francisco. Only then did the lieutenant complete the referral paperwork for the
7 vehicle collision and refer the matter to the Internal Affairs Division. IA initiated
8 IAD Case 21-0862 on 28 July 2021.” (Clarence Dyer, & Cohen Report, p. 3)

9 The IAD investigator assigned to this matter obtained further video, which
10 also showed that the OPD-issued vehicle impacted the civilian vehicle, stopped for
11 approximately 4-5 seconds, and then left the scene. This investigator contacted a
12 vehicle repair professional, who determined that “the collision would have made a
13 loud sound that should have been heard inside a vehicle, even with the windows
14 closed.” (Clarence Dyer, & Cohen Report, p. 4). An informal canvass of OPD
15 personnel also revealed that the OPD Sergeant driving the vehicle was in a dating
16 relationship with a subordinate OPD Officer, although this relationship had not
17 been reported to OPD’s HR Department as required.

18 After interviewing the subject Sergeant and his dating partner about this
19 incident, the IAD investigator drafted a Report of Investigation (ROI) for 21-0862.
20 Plaintiffs’ attorneys have not seen or read this ROI, but the Clarence Dyer, & Cohen
21 Report states that this ROI concluded that a preponderance of the evidence showed
22 that the sergeant should be sustained for:

23
24 “violating the Manual of Rules (“MOR”) for Obedience to Laws for the
25 hit and run and for preventable collision. The investigator also
26 concluded that the officer should not be sustained for the performance
27 of duty MOR. The investigator’s draft report called into question the
28 credibility of both the sergeant and the officer. It also included a
discussion of their dating relationship and their failure to report that
relationship to OPD superior officers or command staff. Finally, it
included a discussion and finding of “not sustained” for the

1 Truthfulness MOR against the sergeant, which the IAD investigator
2 conducted as part of his investigation.” (Clarence Dyer, & Cohen
3 Report, p. 5)

4 The IAD Commander then discussed this ROI with the IAD Commander, an
5 OPD Captain whose name has been publicly reported and is known to this Court.
6 According to the Clarence Dyer, & Cohen Report, this Captain “requested revisions
7 to the ROI with which the Investigator disagreed and to which in the investigator
8 objected.” (Clarence Dyer & Cohen Report, p. 5). Nevertheless, pursuant to explicit
9 direction from the Captain, the investigator revised the ROI at the direction of the
10 OPD Captain in charge of the Internal Affairs Division. The ROI was thus altered
11 in a manner that the investigator believed “minimized the severity of the
12 misconduct and allowed the sergeant to avoid the appropriate consequences for his
13 actions.” (Clarence Dyer & Cohen Report, p. 5).

14 Specifically, the final ROI contained the following revisions, made at the
15 behest of the IAD Commander:

- 16 1. It sustained the sergeant only for the preventable collision, but
17 not for the hit and run;
- 18 2. It changed the passenger-officer’s designation from subject
19 officer to
20 witness;
- 21 3. It concluded that both the sergeant and officer were credible;
- 22 4. It removed the discussion of the relationship issue; and
- 23 5. It deleted any mention of the Truthfulness Manual of Rules or
24 investigation
25 into that issue.

(Clarence Dyer, & Cohen Report, p. 5)

26 The revised findings and recommendations were subsequently presented to
27 OPD’s Executive Command Staff. The Investigator did not disclose that the two
28 officers in the OPD-issued vehicle were in an unreported dating relationship and,
per the IAD Commander’s orders, contained just one sustained finding relating to a
preventable vehicle collision. Notably, there was no discussion of a hit-and-run, a

1 crime. According to the Clarence Dyer, & Cohen Report, the “Chief of Police did not
2 permit extensive discussion of the case and did not request that the video be shown,
3 instead quickly approving the recommended sustained finding and signing the final
4 ROI without reading it.” (Clarence Dyer, & Cohen Report, p. 6). The OPD Sergeant
5 received only counselling and training as a result of the sustained finding for a
6 preventable collision, and there was no further discipline in the matter, and the
7 Sergeant continued to work as an OPD Sergeant.

8 The Clarence Dyer, & Cohen Report then details an incident where an OPD
9 officer discharged a service weapon at the Police Administration Building on the
10 night of April 16-17, 2022. After strike mark from this discharge was noticed by
11 other OPD members, an investigation was commenced. More than one week after
12 the discharge, an OPD Sergeant approached the investigator to admit that he had
13 discharged his weapon, and “admitted to collecting and discarding evidence from
14 the discharge, including the shell casing by throwing it in the San Francisco Bay
15 while driving his service vehicle over the Bay Bridge. The Sergeant was
16 immediately placed on administrative leave.” (Clarence Dyer, & Cohen Report, p. 8)

17 This was the same Sergeant involved in the above-referenced auto collision,
18 and his admission precipitated an investigation into the discharge by outside
19 investigators. During this investigation, outside investigators “identified certain
20 procedural irregularities and possible violations of OPD policy committed by OPD
21 members who conducted the initial criminal and administrative investigations”
22 (Clarence Dyer, & Cohen Report, p. 8), which resulted in a third investigation into
23 the way that OPD’s Internal Affairs and Criminal Investigation Division undertook
24 their investigations of the elevator discharge. The Clarence Dyer, & Cohen Report
25 concludes that:

26
27 During the course of the three confidential Internal Affairs Division
28 investigations referred to above – one for the vehicle collision incident,
the second for the elevator discharge incident, and the third for the

1 investigation into the Department’s handling of the elevator discharge
2 – outside investigators encountered multiple deficiencies in process
3 and policy that undermined the full and complete discovery of the
4 facts. While some of these deficiencies stem from gaps in Department
5 policies, other deficiencies flowed from the Department’s failure to
6 follow or implement existing Department policies. Most disturbingly,
7 some of the deficits appear to stem from a failure of leadership and a
8 lack of commitment to hold members of the Oakland Police
9 Department accountable for violations of its own rules... **These
10 investigations revealed issues and shortcomings that go
11 beyond the conduct of individual officers to the very question
12 of whether the Oakland Police Department is capable of
13 policing itself and effectively holding its own officers
14 accountable for misconduct.**

(Clarence Dyer, & Cohen Report, p. 9, emphasis NOT original)

11 It is clear that there were widespread systemic failures, as well as individual
12 failures by high ranking OPD personnel, that are incongruous with the letter and
13 the spirit of the NSA. An Internal Affairs process where supervisors can demand
14 changes to an ROI without an accompanying paper trail is ripe for abuse.
15 Similarly, a process ending with the Chief of Police signing an altered ROI without
16 much discussion, without examining at the underlying evidence, or even reading the
17 ROI before signing it is fundamentally incompatible with a robust Internal Affairs
18 or discipline process.

19 The Clarence Dyer, & Cohen Report found that the three investigations in its
20 purview “were dogged by a lack of forthrightness by multiple members, both
21 subjects and witnesses, that betrayed a lack of commitment to the pursuit of truth
22 by the Internal Affairs process.” (Clarence Dyer, & Cohen Report, p. 10). This too
23 cannot be reconciled with the requirements mandated by Task 5 of the NSA,
24 specifically, or the overall spirit of the NSA generally.

25 Based on the details laid forth in the Clarence Dyer, & Cohen Report, it
26 appears the OPD Sergeant committed a crime. CA Vehicle Code 20002(a) requires
27 that the driver of any vehicle involved in an accident resulting only in damage to
28

1 property, including vehicles, shall locate and notify the owner or person in charge of
2 that property with the identifying information of the driver of the involved vehicle,
3 or provide written notice of the same and notify the police department where the
4 collision occurred. Failure to do so constitutes a misdemeanor, punishable by jail
5 time and/or fines.

6 Given the facts in this matter, it is simply incomprehensible that OPD's
7 Criminal Investigation Department never opened a criminal investigation. OPD
8 General Order M-04.1 requires that when any member assigned to the Internal
9 Affairs Division has reasonable suspicion that any member of the Department is
10 involved in a felony or misdemeanor, he/she shall immediately contact the IAD
11 Commander. If the IAD Commander cannot be reached, the member shall contact
12 an IAD Lieutenant. (OPD General Order M-04.1, p. 1). Plaintiffs' attorneys wish to
13 know whether this happened and, if not, why not.

14 The same General Order requires that, "upon awareness that any member of
15 the Department is allegedly involved in criminal misconduct, the IAD Commander
16 or IAD Lieutenant shall attempt to determine the identity of the member and the
17 jurisdiction of the alleged criminal misconduct. The IAD Commander or IAD
18 Lieutenant shall provide such information to the CID Commander and shall
19 maintain strict confidentiality at all times." (OPD General Order M-04.1, p. 2). It
20 does not appear that this happened. This, too, is a major, command-level failure to
21 follow basic OPD rules.

22 Moreover, because the offending Sergeant was never investigated by CID,
23 and because the IAD commander intervened to overrule the IA Investigators
24 original report which found that a "preponderance of evidence" showed the Sergeant
25 should be held responsible for violating OPD rules and hit-and-run-laws, the subject
26 officer was **simply given advice and counselling for committing a crime. He**
27 **continued his career as an OPD employee, and discharged his service**
28 **weapon inside the Police Administration Bureau less than one year later.**

1 It is also important to note that Oakland Police Department missed the
2 Government Code Section 3304 deadline for an internal investigation into the hit
3 and run auto collision caused by the OPD Sergeant, so there is no further remedy
4 that can occur regarding this matter. (Plaintiffs' attorneys note that the 3304 date
5 for the supervisors responsible for this failure may not yet have run, because this
6 clock starts on the day of discovery, not the date that it occurred.)

7 Plaintiffs' attorneys are also curious to learn more about why the Chief of
8 Police was sustained in this matter. What, precisely, was discussed during the
9 December 23, 2021 "Chief's Friday Meeting"? Who else was in the room during the
10 meeting? Was the Chief of Police, or anybody else, informed about a possible
11 criminal case? Was the vehicle collision caused by the OPD Sergeant ever referred
12 to the Criminal Investigation Division, and did anybody at this meeting suggest
13 that this occur?

14 OPD Departmental General Order M-03, Complaints Against Departmental
15 Personnel, contains a list of Class I offenses, which are the most serious allegations
16 of misconduct that, if sustained can result in disciplinary action up to an including
17 dismissal, and which may serve as the basis for criminal prosecution. These include
18 the failure of a supervisor to properly supervise and/or take corrective action for
19 misconduct that he/she knew or reasonably should have known about, as well as
20 knowingly and intentionally obstructing the Internal Affairs investigation process
21 in any manner, and commission of a felony or serious misdemeanor. (OPD DGO M-
22 03, pp. 4-5). The Clarence Dyer, & Cohen Report describes each of these scenarios,
23 and yet it does not appear that any of these Class I offenses were initially
24 investigated by OPD. Plaintiffs' attorneys are curious to learn if any of these
25 Manual of Rule violations were investigated and addressed, and whether criminal
26 conduct was uncovered.

27 Based on the foregoing revelations Plaintiffs' attorneys are in agreement with
28 the IMT that OPD is not in compliance with Task 5. This has obvious implications

1 for the Sustainability Period -- which is currently scheduled to end in May 2023 –
2 that will be discussed at greater length, below.

3 **III. Task 20 (Span of Control)**

4 This Task requires that OPD have a policy to ensure appropriate supervision
5 of its Area Command Field Teams. 44 squads were examined by the IMT during
6 the period covered by the draft Second OPD Sustainability Report, and the IMT
7 determined that (1) all squads were supervised by either a primary, relief or
8 other/overtime sergeant for at least 85% of working shifts, and that (2) all squads
9 met the eight-to-one officer-to-supervisor ratio for at least 90% of shifts. Further,
10 OPD has institutionalized practices for tracking supervision/span of control.
11 Plaintiffs' attorneys agree with the IMT that OPD remains in compliance with Task
12 20.

13 **IV. Tasks 24 (Use of Force Reporting Policy) & 25 (Use of Force
14 Investigations and Report Responsibility)**

15 OPD had been in compliance with Tasks 24 (Use of Force Reporting Policy)
16 and 25 (Use of Force Investigations and Report Responsibility) of the NSA since
17 2015. In November 2018, this Court reactivated these Tasks as a result of Plaintiffs'
18 and the Monitoring Team's concerns about systematic underreporting of weaponless
19 defense techniques and incidents related to the pointing of firearms. During the
20 period covered by the 74th IMT Report, OPD came back into compliance with Task
21 24, and Plaintiffs' attorneys agreed with the IMT's assessment that OPD was in
22 compliance with Task 24 at the most recent Case Management Conference. OPD
23 remains in compliance with Task 24 during the period covered by the draft Second
24 OPD sustainability Report.

25 However, as recently as May 2022, OPD was in only partial compliance with
26 Task 25. This was, in part, because the IMT continued to harbor concerns "with the
27 preparation and review of UOF reports by OPD supervisors". (80th IMT Report, p.
28 15). The First OPD Sustainability Report noted that "in general, we now find that

1 supervisors are identifying deficiencies in officer reporting and identifying and
2 addressing MOR violations. We also find that reviewers of the supervisors' reports
3 are identifying and addressing concerns when appropriate." (First OPD
4 sustainability Report, p. 17). The IMT therefore determined that OPD achieved full
5 compliance with Task 25.2. According to the draft Second Sustainability Report,
6 OPD "has continued to meet the overall requirements of this Task and appears to be
7 rendering additional oversight and scrutiny to use of force reporting." (Draft Second
8 OPD sustainability Report, p. 19).

9 Task 25.3 requires that use of force investigations include required
10 recommendations, such as whether the force used was pursuant to a legitimate law
11 enforcement objective, whether the force used was proportional and reasonably
12 related to the underlying objective, whether officers used reasonable verbal means
13 to resolve a situation without force, and whether force was deescalated or stopped
14 when it was reasonable to do so.

15 During their assessment of Level 3 Taser deployments during the period
16 covered by the draft Second OPD sustainability Report, the IMT reviewed eight
17 Taser deployments. The IMT identified one Taser deployment "where we had
18 concerns about the use of force." (Draft Second IMT Report, p. 18). OPD command
19 staff apparently shared the IMT's concerns about this matter and referred the case
20 to IAD for further investigation.

21 As noted above, the IMT determined that OPD remains in compliance with
22 Task 25. Plaintiffs' attorneys defer to the IMT's assessment that OPD is meeting
23 the overall requirements of this Task.

24 **V. Task 26 (Force Review Board)**

25 Task 26 requires OPD to implement a policy concerning its Force Review
26 Board (FRB) proceedings, which are convened to examine Level 2 uses of Force.
27 OPD originally came into compliance with this task in 2013, during the 19th
28 reporting period, and has remained in compliance with the Task ever since. During

1 the reporting period covered by the draft Second OPD sustainability Report, OPD
2 did not submit any completed FRB reports for IMT review. However, the IMT did
3 observe two FRBs conducted in November 2022 and noted “substantive discussion
4 and deliberations among the Board members.” (Draft Second OPD sustainability
5 Report, p. 20). Plaintiffs’ attorneys were not present for any of these FRBs and
6 defer to the IMT’s judgment that OPD is in compliance with Task 26.

7 **VI. Task 30 (Executive Force Review Board)**

8 Task 30 requires OPD to conduct an Executive Force Review Board (EFRB)
9 to review the factual circumstances surrounding any Level 1 force, in-custody death,
10 or vehicle pursuit-related death incidents. Like Task 26, OPD originally came into
11 compliance with this task in 2013, during the 19th reporting period. And as with
12 Task 26, Plaintiffs’ attorneys do not attend EFRBs and defer, generally, to the
13 reporting of the Monitor. The IMT’s assessment is that OPD remains in compliance
14 with Task 30. Plaintiffs’ attorneys concur with this finding.

15 **VII. Task 31 (Officer-Involved Shooting Investigations Review Protocol)**

16 Task 31 requires certain notifications and responses in the event of an officer-
17 involved shooting. During the reporting period covered by the First OPD
18 Sustainability Report, there were two instances where the protocols required by
19 Task 31 were applicable. The IMT found that Task 31 requirements were followed
20 in events, and therefore adjudged OPD in compliance with this Task.

21 Task 31 was not actively monitored for a long time prior to the Sustainability
22 Period, and Plaintiffs’ attorneys have no reason to disagree with the IMT’s
23 compliance status assessment for this Task at this time.

24 Plaintiffs’ attorneys are particularly pleased with the decline and/or absence
25 of unnecessary officer involved shootings in recent years. There were times since
26 the NSA began in 2003, when we saw people beaten and killed by OPD for no valid
27 reason. The Riders case was a turning point in our tolerance for this kind of
28 activity. Plaintiff s’ attorneys believe the vast majority of OPD officers have

1 changed in the 20 years since we have begun this oversight and have no toleration
2 for excessive force in most instances. This development alone has made our twenty
3 year journey worthwhile.

4 **VIII. Task 34 (Stop Data/Vehicle Stops, Field Investigations and**
5 **Detentions) and Task 41 (Use of Personnel Assessment System and**
6 **Risk Management)**

7 Task 34 requires OPD to complete a basic report on all vehicle stops, field
8 investigations, and detentions, and to compile this information into a database that
9 can be searched, queried, and reported by OPD. Task 41 pertains to the Use of a
10 Personnel Assessment System (PAS) and Risk Management, and requires OPD to
11 develop a risk management system to audit the performance of specific members,
12 employees, supervisors, managers, units, and the Department as a whole. Since
13 Task 34 pertains to the collection of stop data and Task 41 pertains to the analysis
14 of said data, these Tasks are linked. Although they were previously assessed
15 separately by the IMT, and both determined to be in NSA compliance prior to the
16 sustainability period, they were evaluated together in the IMT's Draft Second
17 Sustainability Report. This report determined that OPD remains in compliance
18 with both Tasks.

19 As the Monitor notes in the draft Second OPD Sustainability Report, the data
20 OPD collects is comprehensively analyzed and “ has been fully integrated into the
21 Department's risk management process and includes reviews of dispatched and
22 non-dispatched stops, actions taken including searches, and outcomes including
23 citation or arrests or noting that no action resulted from the stop.” (Draft Second
24 OPD Sustainability Report, p. 28). Patterns, trends, and outliers are reviewed
25 during the Risk Management Meetings (RMM), and officers with the highest levels
26 of non-dispatched stops are flagged for further attention from supervisors. The
27 justification for stops, characteristics of those who are stopped, the outcomes of
28 stops, and the officers involved in stops are all subject to analysis via the RMM
process. The year-over-year trend in the stop data speaks to institutionalized,

1 sustainable change within OPD, and therefore, OPD remains in compliance with
2 Tasks 34 and 41.

3 Although we agree with the Monitor's findings, we would caution against the
4 routinization of Risk Management meetings. Some of these meetings take many
5 hours and are occasionally characterized by uneven presentations by Captains
6 and/or Area Commanders. As evidenced by the fiasco outlined in Task 5, above,
7 adequate supervision is a job that will never end, and which requires vigilance by
8 all concerned.

9 **IX. Task 45 (Consistency of Discipline Policy)**

10 Task 45 requires that discipline is imposed in a fair and consistent manner,
11 and Plaintiffs' attorneys were disappointed that OPD did not achieve full
12 compliance with Task 45 prior to the October 2022 Case Management Conference
13 before this Court. According to the draft Second Compliance Report, the IMT has
14 determined that OPD is now in compliance with this Task. Plaintiffs' attorneys
15 agree that OPD has greatly improved in the sphere of data collection when it comes
16 to Stop Data and the Risk Management process. That said, Plaintiffs' attorneys are
17 unable to make a recommendation that OPD stay in compliance with this all-
18 important Task at this time, as it is necessarily intertwined with Task 5, which the
19 IMT has deemed out of compliance.

20 The Clarence Dyer, & Cohen Report details a scenario where discipline was
21 imposed without a full and complete review of the facts uncovered by the Internal
22 Affairs Division. A discipline process where the Chief of Police does not even read
23 Reports of Investigation before signing them is not compatible with Task 45.
24 Similarly, a scenario where the IA commander can demand revisions to an ROI over
25 the objections of his subordinates – especially without any documentation about
26 such a directive -- is antithetical to the goal of fair and transparent discipline within
27 the Department.

28 But the rot runs deeper than that: According to the Clarence Dyer, & Cohen

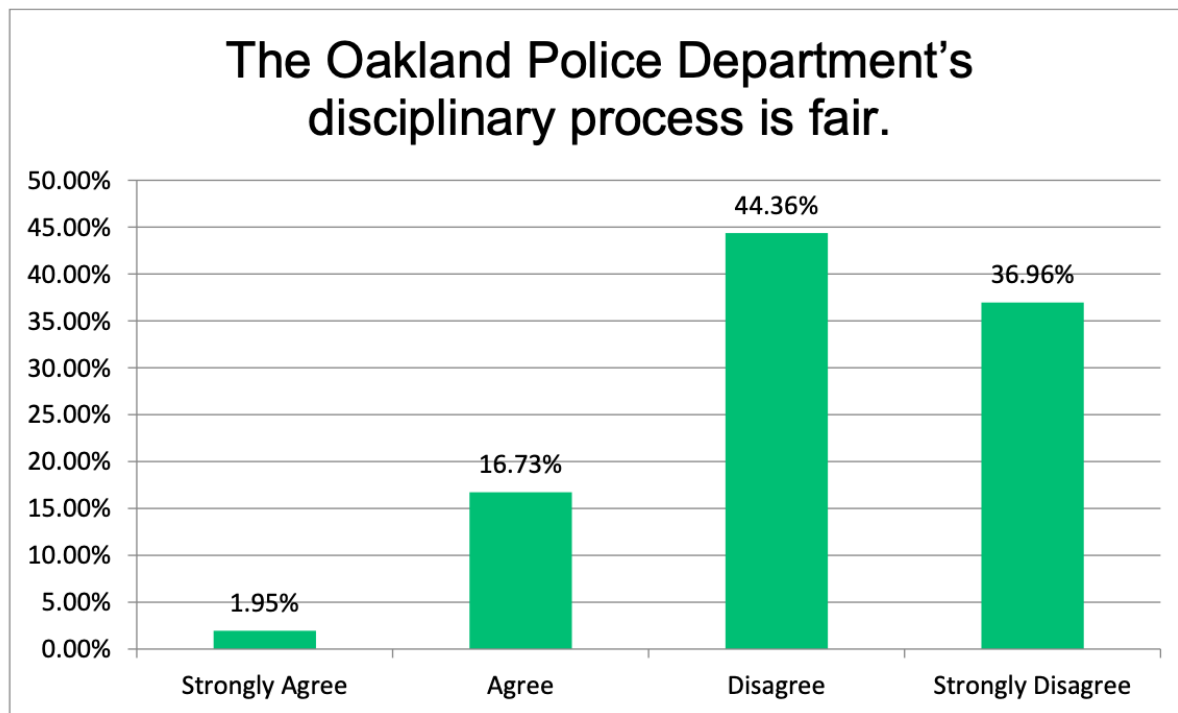
1 Report, “investigators were left with the impression that the system is designed not
2 to uncover the truth and hold those who commit misconduct to account, but instead
3 to find ways to minimize misconduct such that OPD members are able to avoid
4 serious discipline.” (Clarence Dyer, & Cohen Report, p. 15). This echoes some of the
5 findings of the Hillard Heintze disparity study. Although that study had widely
6 acknowledged data problems that rendered some of the resultant analysis
7 functionally useless, there was also a survey component unrelated to data-scraping
8 from OPD’s risk management systems.

9 Specifically, the Hillard Heintze Disparity Study found that the IAD policy
10 which allowed sergeants to be “fact finders and adjudicators has the potential to
11 lessen an investigator’s neutrality” and that this system “is not consistent with
12 promising practices used in departments similar in size to Oakland.” (Disparity
13 Study, p. 11). It also noted that just 18.68% of sworn respondents believe that
14 OPD’s disciplinary process is fair, while 81.32 percent of respondents disagreed
15 with the statement “OPD’s disciplinary process is fair.” (Disparity Study, p. 17)

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2 Only 18.68 percent of the sworn respondents agreed or strongly agreed that the disciplinary process is fair.



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15 A discipline system that is “unfair” in the eyes of more than five of every six
16 employees is untenable, and by definition, not up to the standard mandated by Task
17 45 of the NSA. Indeed, during Plaintiffs’ attorneys many years of involvement with
18 OPD, we have noticed that supervisors and command staff often receive lighter
19 discipline than rank-and-file officers. OPD employees also reported that “who you
20 know, and to which cliques you belong, influence whether an investigation will be
21 sustained and what level of discipline will be administered”, and that the “IAD and
22 disciplinary processes are not transparent.” (Hillard Heintze Disparity Study, p.
23 23). The Clarence Dyer, & Cohen Report’s findings regarding the vehicle collision
24 and subsequent investigatory and disciplinary process is an illustrative example of
25 exactly this dynamic.

26 At the time of this writing, there are press reports that Chief of Police
27 Armstrong was placed on administrative leave as a result of the Clarence Dyer, &
28

1 Cohen Report’s determination that he violated departmental rules by failing to hold
2 officers accountable and allowing them to escape discipline. Specifically,
3 “investigators recommended that the Department sustain Manual of Rules
4 violations against the Chief of Police for failing to hold his subordinate officers to
5 account, for failing to engage effectively in the review of the incident and for
6 allowing the subject officer to escape responsibility for serious misconduct.
7 (Clarence Dyer, & Cohen Report, p. 7).

8 The recommended findings are contained in a separate, confidential Internal
9 Affairs Division report that has not been review by Plaintiffs’ attorneys. We are
10 therefore unable to comment on the specifics, although the very decision to place the
11 Chief of Police on administrative leave suggests there is substantial cause to believe
12 that the Chief committed serious Manual of Rule violations related to failing to hold
13 his subordinate officers to account. In any event, it is clear that the subject officer
14 in the hit and run/discharge of weapon in the PAB case was shown special
15 consideration because of some factor connected with his status in the OPD that
16 would not be shown to other officers had they committed the same misconduct as
17 this officer. Therefore, Plaintiffs’ attorneys do not believe OPD can be in compliance
18 with Task 45, and respectfully request that the IMT immediately reevaluate status
19 of this all-important Task.

20 CONCLUSION

21 The IMT’s determination that OPD is out of compliance with Task 5 due to
22 “information that has been developed to date regarding the Department’s internal
23 investigation and discipline process [that] is deeply troubling” was as a flashing red
24 warning light to Plaintiffs’ attorneys when we received the draft Second
25 Sustainability Report at the end of 2022. The specifics described in the just-
26 published Clarence Dyer, & Cohen Report are an unmitigated disaster for the
27 Department and the Negotiated Settlement Agreement.

28 Plaintiffs’ attorneys will never agree that the OPD has attained compliance if

1 members of the Command Staff attempt to hide misconduct from appropriate
2 supervisors (including the Police Commission), and/or impose inconsistent discipline
3 based on who you know, your race, or what rank you have. Both the draft Second
4 Sustainability Report and the Clarence Dyer, & Cohen Report suggest that is time
5 **to extend the current sustainability period until the Department designs**
6 **policies, practices and procedures to prevent this disaster from happening**
7 **again. Part of these changes necessarily include compliance with Tasks 5**
8 **and 45 as well as implementing the recommendations in the Clarence,**
9 **Dyer & Cohen report. These reforms must be audited to the satisfaction of**
10 **the Court, the Monitor and Plaintiffs' attorneys.**

11 We see no reason why this cannot be done within six months. We insist on
12 reasonable progress reports during that time to assure ourselves that the OPD is
13 making a genuine commitment to resolve these issues. If OPD is not in compliance
14 within this time, we expect that the Sustainability Period will be extended further.

15 OPD is not in compliance with the spirit or the letter of the NSA. Two
16 different tasks, over two different sustainability period IMT reviews, have now
17 fallen out of compliance. OPD must comply with the Negotiated Settlement
18 Agreement in a way that guarantees the reforms will be long lasting, and that OPD
19 members will meet these standards in the future. There is simply no evidence that
20 OPD is even in the vicinity of substantial compliance with NSA Tasks 5 and 45. It
21 is also clear that Court and IMT oversight is still required.

22 Tasks 5 and 45 are not insignificant. If the OPD cannot perform competent
23 Internal Affairs Investigations or discipline its own officers fairly, there will always
24 be questions as to whether they can police themselves, or provide equal justice in
25 the community they serve. Plaintiffs' Attorneys have previously lauded OPD's
26 substantial progress across multiple tasks, and held these up as evidence of cultural
27 reform within the Department.

28 The Clarence Dyer, & Cohen Report paints a bleaker picture of a Department

1 -- and a Command Staff -- in disarray. It also catalogues a very long list of OPD
2 failures: a Sergeant failed to self-report two serious incidents, failed to report a
3 dating relationship with a subordinate officer (who herself also failed to report one
4 incident and her relationship), and then – after escaping with a slap on the wrist –
5 this Sergeant destroyed evidence by throwing a bullet he had discharged in the PAB
6 off the Bay Bridge. An IAD Commander pressured his subordinate to soften an
7 ROI, and there has been no effort to determine why this happened. The Chief of
8 Police was sustained for Manual of Rules violations for failing to hold subordinate
9 officers to account and has apparently been placed on administrative leave. It was
10 also “abundantly clear... that OPD members regularly use their personal cell
11 phones for work-related purposes, both while on active duty and while off-duty.”
12 (Clarence Dyer, & Cohen Report, p. 13). Some of these phones are set to auto-delete
13 text messages every thirty days, which raises serious concerns about the
14 destruction of evidence. The Clarence Dyer, & Cohen Report also noted a “lack of
15 clarity about whether current Internal Affairs Division rules permit investigators to
16 compel production of text or telephone messages maintained on personal telephones
17 even when important evidence is known to exist on those personal telephones used
18 in connection with OPD duties.” (Clarence Dyer, & Cohen Report, p. 13).

19 Judge Thelton Henderson once described OPD’s reform efforts as a
20 “Shakespearian tragedy”¹, and it is not lost on Plaintiffs’ attorneys that Judge
21 Henderson’s March 2016 Order also describes, word for word, the just-released
22 Clarence Dyer, & Cohen Report: “This case raises most serious concerns that may
23 well impact Defendants’ ability to demonstrate their commitment to accountability
24 and sustainability – both of which are key to ending court oversight.” Seven years
25 later, OPD has once again shown that it cannot meet this standard. To wit, the
26 Clarence Dyer, & Cohen Report concludes that the “issues and shortcomings that go
27 beyond the conduct of individual officers to the very question of whether the

28 ¹ <https://themonthly.com/feature1708/>

1 Oakland Police Department is capable of policing itself and effectively holding its
2 own officers accountable for misconduct.” (Clarence Dyer, & Cohen Report, p. 9)

3 It is time to immediately extend the Sustainability Period until, at the very
4 least, OPD regains full compliance with each and every NSA Task and implements
5 the Clarence Dyer recommendation in their report.

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THE CITY'S STATEMENT**OVERVIEW**

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3 As we begin the new year, the Department is doing remarkably well in nearly
4 all aspects of NSA compliance. The City acknowledges, however, serious
5 weaknesses in the Department's internal investigation processes reflected in the
6 failures revealed by the outside law firm's recent investigations. *See Dkt. 1564,*
7 *Order Re Conclusions and Recommendations Re Vehicle Collision and Elevator*
8 *Discharge Incidents* (Jan. 18, 2023) (the Report or the January 18 Report). The City
9 learned about the findings and conclusions set forth in the Report for the first time
10 on January 18, when it received the publicly filed report and two confidential
11 investigative reports penned by the same outside investigator. An additional
12 investigative report regarding the Department's handling of the elevator discharge
13 has not yet been completed. The outside investigator recommended that the
14 Department sustain Manual of Rules violations against multiple officers including
15 the Chief of Police for failing to hold his subordinate officers to account, failing to
16 engage effectively in the review of the investigation into a sergeant's failure to
17 report a collision with a parked car, and for allowing the sergeant to escape
18 responsibility for serious misconduct.

19 In the wake of the information received from the outside investigator, and
20 pending receipt of the final report and its conclusions, on January 20 the City
21 placed Chief LeRonne Armstrong on paid administrative leave. Assistant Chief
22 Darren Allison is serving as Acting Chief while Chief Armstrong remains on leave.
23 While the City does not yet have the evidentiary materials underlying the
24 investigator's recommendations and thus cannot determine whether it agrees that
25 the evidence supports each and every one of the investigator's findings, we agree
26 that the investigation revealed failures that call into question the integrity of the
27 Department's internal investigation processes.
28

1 The City recognizes that to ensure integrity in the Department's internal
2 investigations in the long term it must strengthen the Department's internal
3 processes as well as the City's independent oversight of those processes. The
4 Department's sustained achievement in all other respects, however, demonstrates
5 that the City has both the willingness and capability to achieve effective solutions to
6 the problems identified in the Report.

7 On January 2, Oakland inaugurated its 51st mayor, Sheng Thao. Mayor Thao
8 has served in City leadership since her election to City Council in November 2018.
9 In addition, the City anticipates welcoming an interim city administrator in the
10 near term as current City Administrator Ed Reiskin continues his public service in
11 at the University of California, Santa Cruz. While their voices may change, the
12 City's leaders remain engaged and enthusiastic about promoting constitutional
13 policing, accountability, and community trust. The City's commitment will continue
14 to transcend individual transitions.

15 In this status report, the City discusses the following: (1) internal affairs
16 complaint procedures (Task 5), (2) the Department's risk management program and
17 use of stop data to reduce racial disparities in policing (Tasks 34 & 41), (3) the
18 Department's demonstrated commitment to internal discipline equity (Task 45), (4)
19 officer recruiting and attrition, (5) force and force investigations (Tasks 24, 25, 26 &
20 30), and (6) internal affairs timelines (Task 2).

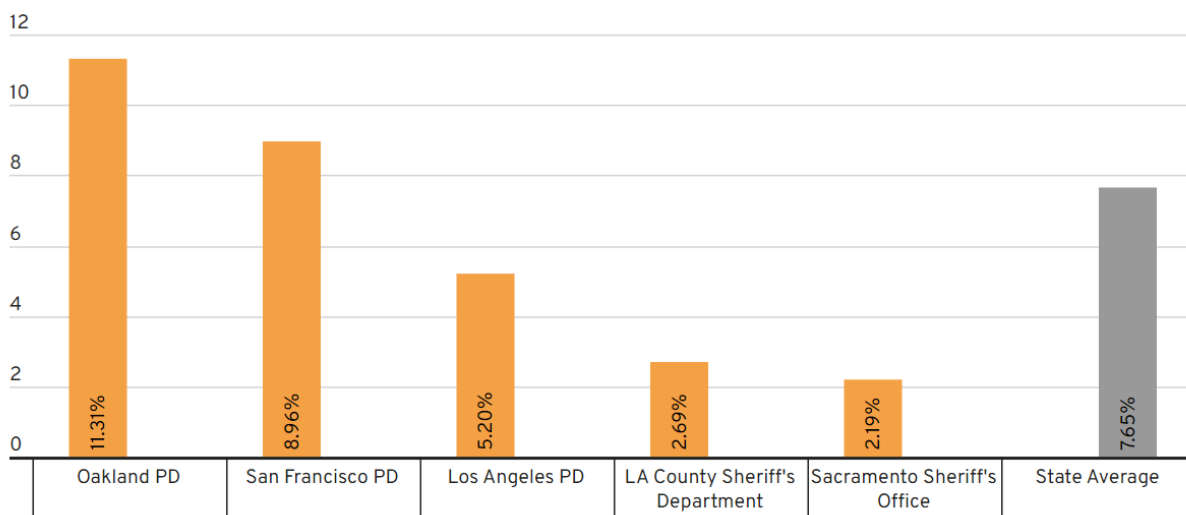
21 I. INTERNAL AFFAIRS COMPLAINT PROCEDURES (TASK 5)

22 Holding individual police officers accountable for their conduct is an essential
23 element of constitutional policing. The Oakland Police Department sustains
24 complaints against its officers at a higher rate than any other major law
25 enforcement entity in the state, except the Department of Corrections and
26 Rehabilitation. *See* Nigel Duara, *From scandal to scrutiny: How intense citizen*
27 *oversight reshaped Oakland police* (Apr. 2022) (citing a CalMatters analysis of
28 Department of Justice data), <https://calmatters.org/justice/2022/04/oakland-police->

1 citizen-oversight/ (last visited Jan. 11, 2023) (graphic reprinted below in *Fig. 1*).
 2 Statewide, California law enforcement agencies sustained 7.6% of complaints
 3 against their officers from 2016 to 2020. *Id.* In those years, the California
 4 Department of Justice (CalDOJ) reported the Oakland Police Department sustained
 5 complaints at an average rate of 11.3%. *Id.* According to CalDOJ’s calculations, in
 6 2018 and 2020, the Department sustained more than 15.2% of complaints, double
 7 the state average. *Id.* Based on the Department’s recent data, it estimates that in
 8 2021-2022, the Department sustained 9.9% of complaints against its officers.²

Oakland sustains complaints against police at higher rate than similar departments

CalMatters calculated the rate of sustained complaints for each California police department, sheriff's office and law enforcement agency for college campuses and railroads. These are the departments with the most complaints filed against officers and the average rate they were sustained between 2016 and 2020.



Source: California Department of Justice

Fig. 1

² CalDOJ and the Department likely did not use the same methodology to calculate these percentages. The Department’s calculations set forth herein are based on the number of sustained allegations using allegations contained in Vision against named officers. Using this methodology, the Department calculates a 2016-2020 sustained complaint rate against officers of 10.4%.

1 But quantity does not automatically equate to quality. The City knows it
2 must continually identify and correct deficiencies in its internal investigation
3 processes to ensure that its investigations are consistently thorough and honest.
4 The City must also continually identify deficiencies in the attitudes surrounding its
5 internal investigations, separate and aside from its policies, if it is going to ensure
6 accountability.

7 The City agrees that based on the conclusions set forth in the January 18
8 Report, *supra*, it has not sustained its progress on Task 5. While the City
9 thoughtfully though promptly considers the recommendations set forth in the
10 Report, it is also considering more robust improvements both within the
11 Department and independent of the Department to establish enduring solutions.

12 As the City has previously made clear, however, it does not intend to rely
13 solely on the police to police themselves. The City's independent police oversight
14 bodies, the Office of Inspector General (OIG), the Police Commission, and the
15 Community Police Review Agency (CPRA), were created to ensure long-term
16 sustainability of Department reform and therefore play important roles in
17 protecting the integrity of the Department's internal investigations process—via
18 audits, policy revision, and independent parallel misconduct investigations. In
19 addition to other corrective action, the City is examining ways to bolster support for
20 its police oversight bodies, including providing resources to ramp up the City's OIG
21 whose primary task enshrined in the City's Charter is to audit NSA reforms, even
22 after Court oversight ends.

23 The OIG has worked in its first year to design and lay the groundwork for a
24 comprehensive oversight framework. It anticipates publishing its audit of the
25 Department's Field Training Program (Task 42) as early as April 2023. After adding
26 a fifth staff member earlier in January, the OIG's current operating staff consists of
27 the IG, Chief of Staff, Director of Communications, Audit Manager, and Executive
28 Assistant. A sixth staff member will join the OIG in February, and it expects to add

1 four additional members to its team as soon as April 2023—three auditors and a
2 policy analyst. Noting that plans and priorities are subject to change based on
3 staffing and evolving information, including a thorough review of the January 18
4 Report and underlying evidence, and with timing contingent upon adequate
5 staffing, prior to release of the January 18 Report, the OIG plans to audit: Internal
6 Affairs Division (IAD) and CPRA referral process for potential criminal cases; the
7 effectiveness of *Department General Order (DGO) R-02, Searches of Individuals on*
8 *Supervised Release*; IAD’s complaint control system; and officer wellness and
9 retention.

10 The City is unequivocal that it must remediate the deficiencies in the
11 internal investigation processes that resulted in failures in two instances of
12 misconduct identified in the January 18 Report. At the same time, the City retains
13 some measure of optimism based on the Monitoring Team’s positive assessment of
14 more recent internal investigations:

- 15 • The Monitoring Team did not disagree with the findings in any of the
16 cases it reviewed;
- 17 • The Department gathered all relevant evidence available;
- 18 • The Department conducted follow-up interviews when necessary to
19 seek clarification or resolve inconsistencies;
- 20 • The Department made credibility assessments where appropriate; and

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- The Monitoring Team agreed with all of the Department’s credibility assessments.³

Dkt. 1557, *Second NSA Sustainability Period Report of the Independent Monitor 8* (Dec. 22, 2022).

II. THE DEPARTMENT MAINTAINS AN EFFECTIVE RISK MANAGEMENT PROGRAM (TASKS 34 & 41)

The Department has continued to operate its risk management program in compliance with policy *DGO R-01, Risk Management* (published Apr. 2022). While the new policy mandates in writing that the Department adhere to certain practices and timelines, the Department has already employed many of these processes, some for as long as several years. For example, the Department has recognized “for a lengthy time period” that stop data, for all stops but particularly for non-dispatch stops, “represents potential risk consistent with the risk management interests of the Department.” *Report at 28*. As a result, stop data has been fully integrated with the risk management process and includes reviews of dispatch and non-dispatch stops, actions taken including searches, and outcomes including citation or arrests or noting that no action resulted from the stop. *Id.*

A. THE DEPARTMENT CONTINUES TO SUSTAIN A MEANINGFUL REDUCTION IN AFRICAN AMERICAN STOP DISPARITIES

In the third quarter of 2022, the Department’s African American non-

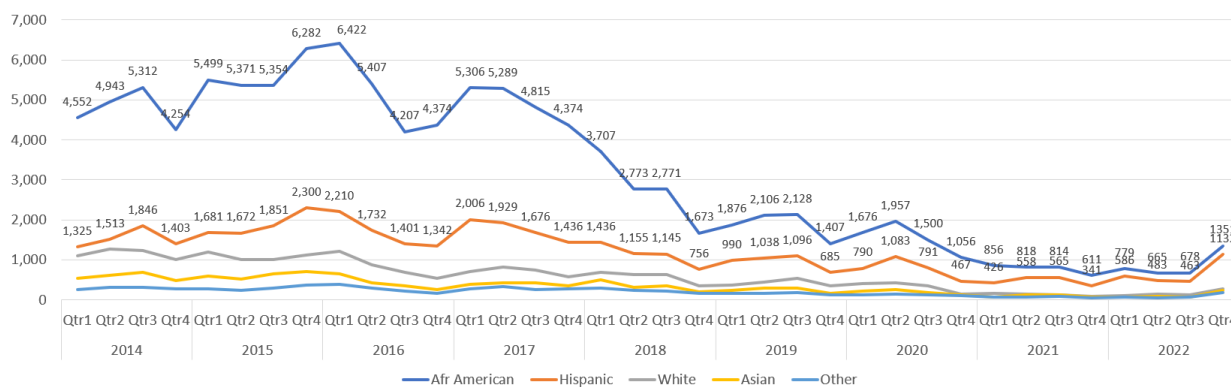
³ The Monitoring Team found the documentation of one credibility assessment “problematic” though not because it did not agree with the Department’s conclusion or because the Department failed to identify and resolve inconsistencies. *Id.* During the investigation, the investigator identified and documented inconsistencies between the officer’s statement and the body-worn camera video. Based on the inconsistencies discovered by the investigator, the investigator interviewed the subject officer twice in order to address and resolve the discrepancies. *See id.* Unfortunately, the investigator’s credibility assessment summary did not accurately reflect the type and significance of the inconsistency, or adequately describe how the investigator resolved the discrepancy. Instead, the summary was “boilerplate” and inaccurately stated that the officer’s statement was consistent with the body-worn camera video. *Id.* But the fact remains that although the summary was inaccurate, the underlying report of investigation reflected that the investigator identified, addressed, and resolved inconsistencies in a manner which supported the investigator’s ultimate finding that the officer was credible.

1 dispatch stop rate was 48%. See *OPD Quarterly Stop Data Report Q3 2022 4*,
 2 <https://www.oaklandca.gov/resources/2022-stop-data-and-reports> (last visited Jan.
 3 9, 2023). Although the Department is still awaiting stop data from
 4 approximately 154 stops that occurred in the last month of the year, the
 5 preliminary fourth quarter 2022 data reflects a 42% African American non-dispatch
 6 stop rate. See *Fig. 2*. Reductions in the Department’s African American stop rate
 7 persisted in the last quarter of 2022 even as the total number of stops increased
 8 because the increase in stops occurred across all races. *Id.*

9 **Non-Dispatch Stops**

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	2014	2015	2016	2017	2018	2019	2020	2021	2022*
Afr American	57%	59%	62%	61%	55%	51%	52%	50%	45%
Hispanic	18%	20%	20%	22%	22%	26%	26%	31%	35%
White	14%	11%	10%	9%	11%	12%	11%	8%	9%
Asian	7%	7%	5%	5%	7%	7%	6%	6%	6%
Other	4%	3%	3%	4%	5%	4%	4%	4%	5%



20 *Fig. 2, 2014-2022 Non-Dispatch Stop Data by Race*

21 Since 2021, the Department has reduced its African American non-dispatch
 22 stop rate below 50% in six of eight quarters. *Id.*; see also Dkt. 1515, *Joint Case*
 23 *Management Statement 54 Fig.4* (Apr. 20, 2022). Prior to 2021, the Department’s
 24 African American non-dispatch stop rate was never below 50%. *Fig. 2*. Between
 25 2017 and 2020, the average annual non-dispatch stop rate for African Americans
 26 was 55%. See *id.* The 2021 African American non-dispatch stop rate was 50%. *Id.*
 27 The 2022 African American non-dispatch stop rate was 45%. *Id.*; see also *OPD*
 28

1 *Quarterly Stop Data Reports Q1-Q3 2022,*

2 <https://www.oaklandca.gov/resources/2022-stop-data-and-reports> (last visited Jan.
3 9, 2023).

4 While the African American non-dispatch stop rate has been steadily
5 trending downward, the Hispanic non-dispatch stop rate has been steadily trending
6 upward. *Fig 2.* Between 2017 and 2020, the average annual non-dispatch stop rate
7 for Hispanics was 24%. *See id.; see also* Dkt. 1515 at 54 *Fig.4.* In 2021, the Hispanic
8 non-dispatch stop rate rose to 31%. *Fig. 2.* In 2022, the Hispanic non-dispatch stop
9 rate rose again to 35%. *Id.* The Department has continued to track the Hispanic
10 stop rate and routinely discusses increases in Hispanic stop data as part of Area,
11 Bureau, and Citywide risk management meetings.

12 The “stark racial inequities” between African American and white individuals
13 in the criminal justice system, however, warrant a particular and enduring focus on
14 reducing African American stop disparities. According to a report published by the
15 Public Policy Institute of California based on 2019 Racial and Identity Profiling Act
16 (RIPA) data, African American or Black residents are considerably overrepresented
17 in police stops statewide, while white and Hispanic residents are represented fairly
18 proportionally in stops compared with their state population share. Magnus
19 Lofstrom, et al., *Racial Disparities in Law Enforcement Stops*, 6-7 (2021),
20 <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/> (last
21 visited Jan. 9, 2023) (graphic reprinted below in *Fig. 3*).

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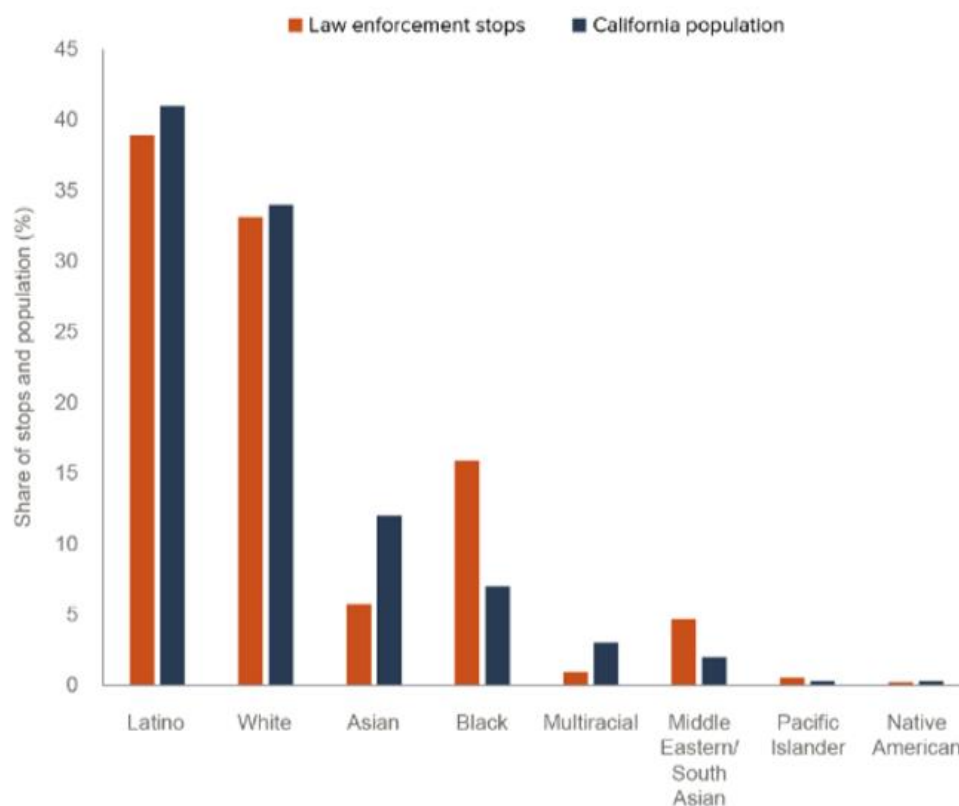
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Black residents are overrepresented in police stops



SOURCES: Author calculations using California Department of Justice, Racial and Identity Profiling Act (RIPA) Wave 2 data, 2019; RIPA Board Report 2021 population calculations using American Community Survey (2018).

Fig. 3

B. THE DEPARTMENT’S RECENT IN-DEPTH INSPECTION OF NON-DISPATCH STOPS BY RACE

As part of its risk management process, the Department regularly examines overrepresentation of African Americans in its stop data. As the Hispanic non-dispatch stop rate has steadily crept higher in recent years, the Department has also added regular discussions about Hispanic non-dispatch stops (both intel-led and non-intel led) to its risk management meetings. To supplement the ongoing analysis, during the past few months the Bureau of Risk Management has undertaken a detailed inspection of the Department’s non-intel based, non-dispatch

1 stops of African Americans, and non-dispatch stops of Hispanic individuals to
 2 determine if there are identifiable factors that may be contributing to the observed
 3 overrepresentation of African Americans and the observed increase in Hispanic non-
 4 dispatch stops. Based on Court and plaintiffs' counsel interest, the Department's
 5 memorandum is attached as Exhibit 1 (redacted and not including appendices to
 6 remove confidential personnel information), and the City has summarized some of
 7 the findings below. *See* Dkt. 1548 25:23-26:11, 28:16-19, Oct. 13, 2022 Court Hr'g
 8 Tr.

9 1. Non-Dispatch, Non-Intelligence Led Stops Allow for Officer 10 Discretion

11 Stops based on objective information and specific directives (e.g., intelligence-
 12 led stops) tend to reduce potential bias in officer decision making during non-
 13 dispatch stops. Therefore, non-dispatch, non-intelligence (non-intel) led stops are
 14 the category of stops in which officer discretion has the greatest impact, and where
 15 potential bias may be more likely to impact stops. *See* Ex. 1 at 2; *see also OPD*
 16 *Quarterly Stop Data Reports Q1-Q3 2022* at 2-3, *supra*. It is significant, therefore,
 17 that through the third quarter of 2022 the Department posted an overall year-to-
 18 date decrease in non-dispatch, non-intel led stops. *See* Ex. 1 at 2; *Fig. 4*.

19 Non-dispatch, Non-Intel Led Stops: January – September

20 Race	2021	2022	21-22 # Change	21-22 % Change
21 Black or African American	1,279	897	-382	-30%
22 Hispanic	984	749	-235	-24%
23 White	297	175	-122	-41%
24 Asian	232	131	-101	-44%
25 Other	160	83	-77	-48%
Total	2,952	2,035	-917	-31%

26 *Fig. 4*

27 ///

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1 **2. The Vast Majority of Non-Dispatch, Non-Intel Led Stops**
 2 **Across All Races Are Traffic Stops for Moving Violations**

3 Non-dispatch, non-intel led stops are mostly vehicle stops (88% in 2021-3Q
 4 2022) versus pedestrian (12%), bicycle (<1%), or other (<1%). The overwhelming
 5 majority of vehicle stops are stops for traffic violations (90% in 2021-3Q 2022). Ex. 1
 6 at 3. In the first three quarters of 2022, moving violations accounted for the vast
 7 majority of traffic stops across all races. *Id.* at 4; *Fig. 5*. The most frequently cited
 8 moving violations were California Vehicle Code (VC), sec. 21461(a), Driver Fail to
 9 Obey Sign/Etc.; VC 22450(a), Fail to Stop Vehicle at a Crosswalk, Stop Sign, etc.;
 10 and VC 23123.5, Driving while Using a Handheld Device. *See* Ex. 1 at 9.

11 **Non-dispatch, Non-Intel Led Traffic Stops by Type and Race:**
 12 **January – September 2022**

Type of Traffic Stop	Black or African American	Hispanic	White	Asian	Other
Moving Violation	93% (613)	93% (579)	91% (114)	93% (106)	92% (68)
Equipment Violation	5% (35)	5% (29)	6% (7)	6% (7)	4% (3)
Non-Moving Violation	2% (14)	3% (17)	3% (4)	1% (1)	4% (3)

13
14
15
16
17 *Fig. 5*

18 In 2021 and 2022, Patrol Division commanders repeatedly emphasized that
 19 officers should prioritize moving violation-based vehicle enforcement stops,
 20 especially in areas the City's Department of Transportation has deemed part of the
 21 High Injury Network (HIN).⁴ *Id.* at 4; *see Oakland Dept. of Transportation*
 22 *(OakDOT) Equity Toolbox*, <https://www.oaklandca.gov/resources/oakdot-geographic->
 23

24 ⁴ The OakDOT Geographic Equity Toolbox was created as a way for the City of
 25 Oakland to prioritize neighborhoods based on concentrations of people with
 26 demographic factors determined to have experienced historic and current
 27 disparities. Ninety-five percent of the HIN is in medium and high priority equity
 28 neighborhoods. Neighborhood priority level scores are based on people of color (25%), low income households (25%), people with disability (10%), seniors (10%), single-parent families (10%), severely rent-burdened households (10%), low educational attainment (10%).

1 equity-toolbox (last visited Jan. 15, 2023). The data reflected in Figure 5
 2 demonstrates that officers followed the Department's directive to prioritize moving
 3 violations over other types of vehicle code violations. *Id.*

4 **3. Non-dispatch, Non-Intel Led Non-Traffic Violation Stops**

5 For each stop, officers must select the type of stop from a list of seven
 6 categories. *See Fig. 6* (reprinted from *OPD Quarterly Stop Data Reports Q1-Q3 2022*
 7 at 2, *supra*).

8 **Stops Reasons**

9 For every stop, officers must select one of the following stop reasons:

- 10 1. Traffic Violation: Stops based on observation of a vehicle or pedestrian law or ordinance
 11 violation. Traffic Violation types:
 - 12 • Moving Violations: Speeding, running a red light
 - 13 • Equipment Violations: Brake lights off or not working
 - 14 • Non-Moving Violations, including registration: Expired registration tags
- 15 2. Probable Cause: Fair probability exists that the person stopped committed a crime and
 16 may be arrested.
- 17 3. Reasonable Suspicion: Sufficient information exists that the person stopped may have
 18 committed a crime or engaged suspected criminal activity. The stop may not lead to an
 19 arrest and the person may only be temporarily detained.
- 20 4. Probation or Parole: Stop of a person known to be on supervised release (probation,
 21 parole, or post-release community supervision – PRCS) for the purpose of checking
 22 compliance with their supervised release, or other action related to their supervised
 23 release status.
- 24 5. Consensual Encounter & Search: Contact to investigate a person's involvement in criminal
 25 activity, where the person is free to refuse to engage the officer and/or leave the officer's
 26 presence. This category does not include routine or innocuous interactions such as giving
 27 driving directions. However, if a consensual encounter results in search, officers will select
 28 this reason.
6. Community Caretaking: Contact to assess whether the subject should be held under
 section 5150 of the Welfare and Institutions Code because of a mental health disorder
 and potential harm to themselves or others.
7. Truant/Education Code: Stop where the subject is believed to be a truant, or the
 encounter takes place on school grounds and there is a possible education code violation.

24 *Fig. 6*

25 Apart from traffic violations, in 2021 and 2022 officers conducted vehicle and
 26 non-vehicle non-dispatch, non-intel stops on African Americans for the following
 27 reasons: 13.5% probable cause, 6% reasonable suspicion, 3% community caretaking,
 28 less than 2% consensual encounter and search, and less than 1% truancy. *See Fig.*

7, (Summary Slide from Nov. 2022 Citywide Risk Management Meeting). During the same period, apart from traffic violations officers conducted vehicle and non-vehicle non-dispatch, non-intel stops on Hispanics for the following reasons: 9.5% probable cause, 3.5% reasonable suspicion, less than 2% community caretaking, less than 1% consensual encounter and search. *Id.*

During 2021 through 3Q 2022, for Hispanic non-dispatch stops, non-vehicle stops (including intel-led and non-intel led), reasonable suspicion and probable cause were the most common reasons (86.5%). *See* Ex. 1 at 28.

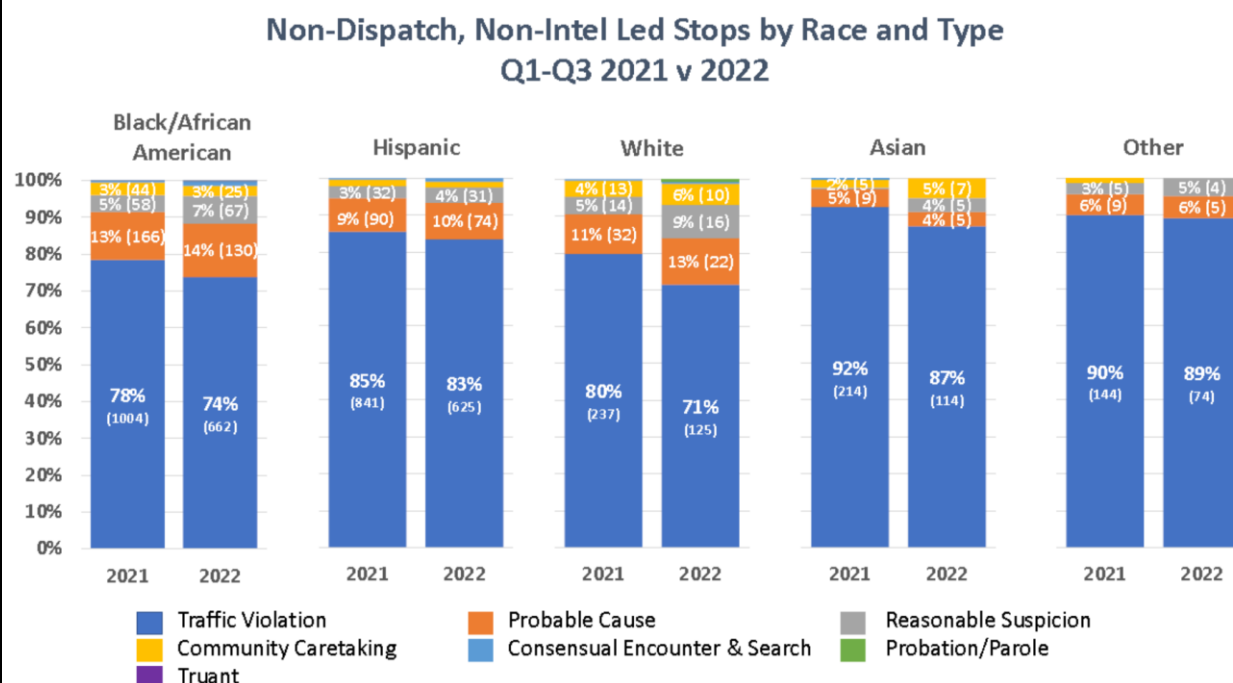


Fig. 7, Slide from Citywide Risk Management Meeting (Nov. 2022)

4. Geographic Trend: Highest Rates of African American and Hispanic Non-Dispatch Stops Occur in East Oakland

In Areas 4 and 5, African American and Hispanic stops accounted for more than 4 out of 5 non-dispatch stops in 2021 through 3Q 2022. *Id.* at 26. No other race accounted for more than 8% of the of the stops for those Areas. *Id.* During that time:

- Area 4 African American non-dispatch stops went down 3%, and Hispanic non-dispatch stops rose 3%; and

- Area 5 African American non-dispatch stops went down 5%, and Hispanic non-dispatch stops rose 5%.⁵ *Id.*

5. Conclusion

The non-dispatch stop data demonstrates that officers are following Department directives. The majority of non-dispatch, non-intel led stops are vehicle traffic stops for moving violations; this comports with the directive to emphasize dangerous driving actions over equipment violations or vehicle registration issues. *Id.*; see also *Safe Oakland Streets Traffic Safety Initiative: Year One Report on the Safe Oakland Streets Initiative* 27, https://cao-94612.s3.amazonaws.com/documents/20220626_SOS-Presentation_PWC.pdf (last visited Jan. 15, 2023) (71% of the Department's 2021 non-dispatch stops were within 500 feet of the HIN). Furthermore, both the increase in intel-led stops—particularly stops using intelligence based on recent crime trends and patterns, and the facts that the majority of non-vehicle non-dispatch stops are initiated based on reasonable suspicion or probable cause, comport with the Department directive for proactive enforcement measures to be data-driven with less room for discretion or reliance on officer training and experience. *See id.* The majority of non-dispatch, other-than-vehicle stops are intel-led and largely enacted by a few specialized units conducting investigative follow up or operations designed to address specific areas of concern (e.g., gang activity, human trafficking); this comports with the Department's directives to use enforcement tactics to target the relatively few individuals responsible for the most serious crimes. *Id.*

The Department's directives are discussed routinely at all levels within the Department, and substantially during monthly risk management meetings in connection with stop data analyses at the Area, Squad, and Officer levels to ensure

⁵ Area 6 was created in 2022 and encompasses police beats previously assigned to Area 5. Although data comparisons take this into account it may mean there are some imperfections in 2022 data comparisons.

1 commanders and supervisors are enforcing the directives and that every officer is
2 complying with the directives and adhering to constitutional policing principles. *See*
3 *id.*

4 **III. CONSISTENCY OF DISCIPLINE POLICY (TASK 45)**

5 With the Department's development of a comprehensive working
6 methodology for determining whether there are "unexplained differences in
7 discipline processes and outcomes across officers of different demographic
8 characteristics [including race]," we have achieved consensus that the Department
9 is in compliance with Task 45. *Second NSA Sustainability Period Report* at 31,
10 *supra*; *see Ex. 2, Working Methodology for Internal Affairs (IA) Disparity Analyses.*

11 The Department developed the comprehensive methodology in consultation
12 with researchers from Stanford and the Monitoring Team. The content of the
13 methodology was advanced and informed in significant part by the Department's in-
14 depth investigation into racial disparity observed in 2019 Division-Level
15 Investigation (DLI) case outcomes. Through firsthand experience during its
16 investigation, the Department learned how to more effectively consider data within
17 the various workflows of the discipline process, how to identify and use causal
18 versus correlative variables, and the applications and limitations of objective
19 discipline data.

20 The Department will sustain compliance with Task 45 by using the working
21 methodology to monitor discipline data and identify disparities in the investigation
22 and discipline outcomes across demographic categories including race and ethnicity,
23 gender, and rank. The methodology remains "working" in the sense that the
24 Department may continue to modify the methodology as appropriate to facilitate its
25 data analyses (e.g., if the Department identifies additional variables that may
26 result in, correlate with, or explain apparent differences observed in the discipline
27 data). The Department looks forward to presenting its 2022 discipline data analyses
28 employing this methodology. The Department anticipates it will complete its

1 analyses of the 2022 discipline data by the end of the first quarter 2023.

2 **IV. OFFICER RECRUITMENT, ATTRITION, AND COMMITMENT TO**
 3 **DEPARTMENT DIVERSITY**

4 The Department's ongoing strategic outreach efforts demonstrate its
 5 commitment to attract and actively recruit officers who reflect the diversity of
 6 Oakland, racially and otherwise, and who live in or have meaningful ties to the
 7 City. *See Oakland Police Dept. (Q3) Quarterly Staffing Memo 14-16* (Dec. 13, 2022),
 8 <https://www.oaklandca.gov/resources/info-memo> (last visited Jan. 11, 2023).

9 Between July and September 2022, the Department hosted or attended 17
 10 recruitment events. There were 14 in-person events, nine of which occurred in
 11 Oakland, and three online events. *Fig. 8*. For each event, the Department tracked
 12 the number of individuals who showed interest in police officer trainee (POT)
 13 positions (graduating from the academy and becoming a sworn officer), the cadet
 14 program (part-time positions for young adults attending high school and college to
 15 provide an introduction to various sworn and non-sworn positions within the
 16 Department), or dispatcher positions (non-sworn). *Oakland Police Dept. (Q3)*
 17 *Quarterly Staffing Memo* at 15-16, *supra*. The Department partnered with the City's
 18 Economic Workforce Development Agency to fund 10 cadet positions for Oakland
 19 high school and college students. *Supplemental City Council Agenda Report – OPD*
 20 *NSA Status Update 4*, Concurrent Meeting of the Oakland Redevelopment
 21 Successor Agency and the City, Item 10, Supplemental Report,
 22 <https://oakland.legistar.com/calendar.aspx> (last viewed January 18, 2023). The
 23 Department also offers a mentorship program to provide additional support for local
 24 candidates that face challenges. *Id.* at 3.

25 **3Q2022 Recruitment – Outreach Events**

Date	Event	Location	Number of Attendees	Inquiries: Number and Type
9-Jul-22	Bill Pickett Invitational Rodeo	Rowell Ranch Rodeo Ground, Hayward	1,000	POT 4 Dispatcher 2 Cadet 2

1	10-Jul-22	Bill Pickett Invitational Rodeo	Rowell Ranch Rodeo Ground, Hayward	1,000	POT 3 Dispatcher 0 Cadet 3
2	13-Jul-22	OPD Recruiting Zoom Webinar	Online	39	POT 34 Dispatcher 0 Cadet 0
3	27-Jul-22	OPD Block Party	San Antonio Park, Oakland	300	POT 2 Dispatcher 1 Cadet 2
4	3-Aug-22	Scottish Highland Gathering & Games	Alameda Fairgrounds, Pleasanton	1,500	POT 12 Dispatcher 5 Cadet 30
5	4-Aug-22	Scottish Highland Gathering & Games	Alameda Fairgrounds, Pleasanton	1,500	POT 20 Dispatcher 10 Cadet 22
6	13-Aug-22	Laurel Street Fair	35th & MacArthur Blvd, Oakland	1,000	POT 2 Dispatcher 1 Cadet 2
7	13-Aug-22	Recruiting Event	New Hope Baptist Church, 892 36th Street, Oakland	200	POT 0 Dispatcher 0 Cadet 0
8	17-Aug-22	OPD Recruiting Zoom Webinar	Online	28	POT 28 Dispatcher 0 Cadet 0
9	20-Aug-22	Practice Physical Ability Test	Merritt College, Oakland	17	POT 17 Dispatcher 0 Cadet 0
10	20-Aug-22	Chinatown Street Fest	388 Ninth Street, Oakland	200	POT 5 Dispatcher 1 Cadet 2
11	21-Aug-22	Chinatown Street Fest	388 Ninth Street, Oakland	200	POT 3 Dispatcher 0 Cadet 0
12	31-Aug-22	Day of Action	85th Avenue & International Blvd., Oakland	100	POT 1 Dispatcher 0 Cadet 0
13	4-Sep-22	Las Vegas Lowrider Super Show	Las Vegas, Nevada	2,000	POT 0 Dispatcher 0 Cadet 0
14	10-Sep-22	Little Saigon Festival	7th Avenue & International Blvd., Oakland	200	POT 0 Dispatcher 0 Cadet 0
15	14-Sep-22	OPD Recruiting Zoom Webinar	Online	69	POT 69 Dispatcher 0 Cadet 0
16	17-Sep-22	Practice Physical Ability Test	Merritt College, Oakland	10	POT 10 Dispatcher 0 Cadet 0

26 *Fig. 8*

27 ///

28

1 In addition to attending outreach and recruiting events, the Department uses social
2 media and online forums to publicize events and open positions. The Department
3 maintains an online presence using the following platforms to share current
4 recruitment and hiring opportunities:

- 5 • OPD Jobs Website – www.opdjobs.com,
- 6 • Facebook – <https://m.facebook.com/opdjobs/>,
- 7 • Twitter – <https://twitter.com/opdjobs>,
- 8 • Instagram – www.instagram.com/opd_jobs,
- 9 • Additional Websites – Campuspride.org; Provident.com (Professional
10 Diversity Network), LGBTConnect.com, Out and Equal, and Black
11 Career Network,

12 *id.* at 3-4; *Oakland Police Dept. (Q3) Quarterly Staffing Memo* at 14, *supra*.

13 The Department researches targeted marketing strategies and pathways of
14 communication, including working with community organizations to conduct hiring
15 workshops and obtain input on achieving and maintaining visibility in a variety of
16 communities. *Oakland Police Dept. (Q3) Quarterly Staffing Memo* at 16, *supra*.

17 **A. RECENT ACADEMY DEMOGRAPHICS**

18 In November 2022, the Department commenced its 191st Basic Academy. The
19 academy is a 24-week program. Tables 1 and 1A below reflect the demographics of
20 the 26 Oakland police officer trainees who entered the 191st Academy. Three of the
21 trainees are Oakland residents.

22 ///

Table 1: OPD's 191st Basic Academy Demographics (Nov. 2022)

Gender		Race/Ethnicity		Residency		Language		Education	
Female	3	Asian	5	Oakland	3	Spanish	8	High School	8
Male	23	Black or African American	11	Other	23	Arabic	1	Some College	10
		Hispanic	8			Punjabi/Hindi	1	AA/AS	5
		White or Caucasian	0			Toisanese	1	BA/BS	3
		Other	2			Vietnamese/Cantonese	1		
						Yoruba/Pashto	1		
Total	26	Total	26	Total	26	Total	13	Total	26

Table 1A: Race/Ethnicity & Gender in OPD's 191st Academy (Nov. 2022)

Race/Ethnicity	Female	Male
Asian	0	5
Black or African American	0	11
Hispanic	3	5
White or Caucasian	0	0
Other	0	2
Total	3	23

B. THE DEPARTMENT PROJECTS AN END TO RECENT ELEVATED ATTRITION RATE

From 2016 through 2020, the Department maintained an average attrition rate of 5 officers per month. That rate nearly doubled in 2021 and the first half of 2022. Since the rate fell again in the second half of 2022, however, the City projects an average attrition rate moving forward of 4 officers per month. *Id.* at 5; *see also Quarter 2 Staffing Report 12* (average attrition rate rose to 9 officers per month), (Sep.26, 2022), <https://www.oaklandca.gov/resources/info-memo> (last visited Jan. 11, 2023). The Department closed the year with 678 of 726 authorized sworn positions filled. For comparison, the Department began 2021 with 723 sworn officers and ended 2021 with 690 sworn officers. *Oakland Police Dept. (Q3) Quarterly Staffing*

1 *Memo 6, supra; Quarterly Police Staffing Report (4th Quarter 2021) 6* (Mar. 4, 2022),
2 <https://www.oaklandca.gov/resources/info-memo> (last visited Jan. 11, 2023).

3 **V. OFFICERS USE REASONABLE FORCE AND DEPARTMENT FORCE**
4 **REVIEW IS DEPENDABLE**

5 “The use of force and the processes in which force is documented and
6 reviewed have been at the core of the Court’s oversight.” *Second NSA Sustainability*
7 *Period Report at 17, supra*. The Department not only remains in compliance with all
8 tasks involving force, force reporting, and force investigation but has continued to
9 improve its supervision of force and force review. *See id.* at 11-23. The Monitoring
10 Team’s most recent report was complimentary of the Department’s achievements
11 and continued progress in these areas. *See id.* In general, officers are appropriately
12 using and reporting force, and supervisors are generally identifying and addressing
13 any concerns that exist. *Id.* at 13.

14 **A. FORCE AND FORCE INVESTIGATIONS (TASKS 24 & 25)**

15 The Department has continued its own internal command oversight and
16 assessment of force and force investigations using a process patterned after the
17 Monitoring Team’s review process. The Department’s assessment team has been
18 successful in providing an additional, high-level layer of oversight to ensure
19 thoughtful, rigorous force review. The Monitoring Team has praised the
20 Department’s “ongoing quality control mechanism,” and acknowledged that it “is
21 addressing areas of concern without the need for [the Monitoring Team] to bring the
22 concerns to their attention.” *Id.* at 17, 18. In general, supervisors are identifying
23 deficiencies in officer reporting and identifying and addressing Manual of Rules
24 violations. *Id.* at 17. Additionally, reviewers of the supervisors’ reports are generally
25 identifying and addressing concerns where appropriate. *Id.*

26 In the Monitoring Team’s most recent review of 29 Level 3 and Level 4 use of
27 force reports completed between June and August 2022, it recognized that the
28 Department sustained its achievements and made further improvements on many

1 measures:

- 2 • The percentage of force incidents involving African Americans
3 decreased 8% (*id.* at 12), a further reduction in addition to the 14%
4 decrease achieved in the previous quarter (Dkt. 1540, *First NSA*
Sustainability Report of the Independent Monitor 12 (Oct. 3, 2022);
- 5 • There were no instances where the use of force was not de-escalated or
6 stopped reasonably when resistance decreased (*Second NSA*
Sustainability Period Report at 17, *supra*);
- 7 • There were no instances where officers could have made additional
8 efforts to explain to subjects why detention was occurring prior to
9 using force (*id.*);
- 10 • There was continued improvement in officers identifying themselves as
11 police officers when appropriate and there was time to do so (*id.*);
- 12 • Supervisors identified and properly addressed all but one body-worn
13 camera issue (delayed activation) (*id.*);
- 14 • The Department had already identified the single incident where an
15 officer failed to report a use of force prior to the Monitor’s review (*id.*
at 14); and
- 16 • All use of force reports that were not completed within the required
17 timeframe had approved extensions (*id.* at 12).

18 **B. FORCE BOARDS (TASKS 26 & 30)**

19 During the Second NSA Sustainability Period, the Department held two
20 Force Review Boards to review Level 2 uses of force. No Executive Force Review
21 Boards were completed for Level 1 uses of force (e.g., officer-involved shootings).
22 The Monitoring Team did not disagree with any of the Boards’ findings that officers’
23 used force in compliance with law and policy. *Id.* at 20. Furthermore, the
24 Monitoring Team recognized a number of positive qualities characteristic of the
25 Department’s force boards that contribute to consistent and effective boards. For
26 example, the Monitoring Team continued to observe “substantive discussion and
27 deliberation among Board members,” and that members “spend a great deal of time
28 discussing issues ancillary to the issues of force such as tactics, supervision, force
alternatives, and training opportunities.” *Id.*

1 In addition, Boards generally identify follow-up items and track them as
2 deliverables, including things like counseling and training for particular officers or
3 squads, publication of department-wide training materials, and modifications to
4 policy. *See id.* at 21. At the time of the Monitor’s last assessment, there were no
5 open deliverables. *Id.* All follow-up items from previously convened boards had been
6 completed. This is the first time that the Department has accomplished this feat
7 since the Monitoring Team has been tracking these items. *Id.*

8 This accomplishment is the intentional result of the Bureau of Risk
9 Management’s focus and perseverance. When the Department reinstated the
10 Bureau of Risk Management (BRM) in 2021, the Court asked how the Department
11 planned to evaluate the procedures and value of the BRM and its contribution to
12 managing the Department. *See* Dkt. 1486 9:23-26:11, Sep. 1, 2021 Court Hr’g Tr.
13 Previously identified items include publication of *DGO R-01 Risk Management*
14 *Policy* (completed) and implementation of an effective risk management program in
15 compliance with such policy which is successful and ongoing. The City had also
16 identified as additional “concrete” measures that would demonstrate BRM’s value to
17 the Department, “no observed significant backlogs on force board scheduling or
18 deliverables from boards.” Dkt. 1495, *Joint Case Management Statement* 48 (Dec.
19 22, 2021). These recent accomplishments demonstrate the tangible measure of the
20 BRM’s value to the Department. The City is confident that moving forward the
21 BRM will continue to prove its mettle as its component divisions IAD and Office of
22 Internal Accountability (OIA) will necessarily play vital roles in supporting the
23 Department’s remediation and internal oversight of its internal investigation
24 processes.

25 **VI. INTERNAL AFFAIRS TIMELINES (TASK 2)**

26 The Department remains in compliance with Task 2. *Second NSA*
27 *Sustainability Period Report* at 3, *supra*. The Department has consistently met its
28 internal 180-day deadline on at least 85% of internal investigations closed from

1 October 2021 to date. *See* Dkt. 1505 2, *Seventy-Ninth Report of the Independent*
2 *Monitor* (Feb. 22, 2022); Dkt. 1519 2 *Eighty-First Report of the Independent Monitor*
3 (Apr. 26, 2022); *First NSA Sustainability Period Report* at 3; *Second NSA*
4 *Sustainability Period Report* at 3. In the third quarter of 2022, the Department
5 timely completed 100% of Class I and 97% of Class II investigations. *Second NSA*
6 *Sustainability Period Report* at 3. Based on the Department's initial fourth quarter
7 2022 data, it projects timely completion rate will be at least 95% for both Class I
8 and Class II investigations. Finally, the Department also continues to routinely
9 complete the discipline recommendation process on all cases with sustained findings
10 within 30 calendar days as required by policy. *See id.*

11 CONCLUSION

12 The City approaches each new year with a sense of optimism. While violent
13 crime rates remain much higher than they were pre-pandemic, 2022 was
14 significantly less violent than 2021. This gives the City hope that the Department's
15 strategic, coordinated effort to curb gun crimes and violence will continue to
16 correlate with a reduction in violent crime in our community. The City
17 acknowledges, however, that effective long-term crime-fighting strategies
18 ultimately require trust and collaboration between police and the communities they
19 serve. Constitutional policing is the foundation for that trust; constitutional policing
20 is also the foundation of the NSA. Constitutional policing includes holding
21 individual officers accountable for their conduct. The City appreciates that officer
22 accountability is directly and indirectly related to achieving the most basic goals of
23 policing: reducing crime, enhancing the quality of neighborhood life, and providing
24 fair, respectful, and equal treatment for all people. Moreover, the City recognizes
25 that sustaining the Department's significant and, in many cases, pioneering
26 reforms is crucial to fostering a positive relationship with the community and a
27 sense of partnership in working to improve public safety.

28

