



**OAKLAND POLICE DEPARTMENT  
MONTHLY PROGRESS REPORT  
SEPTEMBER 1, 2013**

**OFFICE OF THE COMPLIANCE DIRECTOR  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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## Office of the Compliance Director

U.S. District Court, Northern District of California

September 1, 2013

This is the third monthly progress report, issued as required by Judge Thelton E. Henderson's Compliance Director Court Order dated December 12, 2012.

Satisfactory progress on numerous important projects occurred this month, as detailed in the Significant Events section of this report. A review of this month's benchmarks will reveal that most are focused on revising Departmental policies – the fundamental building blocks upon which OPD operates. This office, working with OPD, the City, the plaintiffs' bar, the OPOA, and the Independent Monitor, has recognized the difficulties and complexities of changing Departmental policies. Coordinating with the necessary stakeholders has exceeded our assessments as articulated in the original Benchmark Plan. We feel that it is far better, and in the interests of all concerned, to "get it right" as opposed to "get it done." This will be evidenced in the benchmarks section of this report, where we note progress achieved but slip final benchmark completion into future months.

Another critical issue for the long-term development of OPD has come into focus this month. Much has been made of the universally accepted goal of increasing the sworn strength of OPD over the next several years. To date, City and OPD planners have focused on output of new officers graduating from the police academy as the primary method of achieving this goal. A closer look at OPD reveals that anticipated attrition over the next several years may well consume a substantial portion of the output of the academy, limiting actual growth. Another unsettling aspect of this realization is the evolution of a department that replaces seasoned members with an increasing percentage of junior officers.

Golden West Tower Bldg.  
1970 Broadway Ave., Suite 930  
Oakland, CA 94612

510-238-4459  
oaklandcompliancedirector@gmail.com

A more balanced program that includes enhanced recruiting, efforts to slow attrition, and increased efforts to recruit lateral transfers to OPD from other law enforcement agencies must be quickly crafted and implemented.

This complex blend of issues again highlights the challenges this office and the parties face in building a sustainable OPD for the future.

A handwritten signature in dark ink, reading "Thomas C. Frazier". The signature is written in a cursive style with a long, sweeping underline.

Golden West Tower Bldg.  
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oaklandcompliancedirector@gmail.com

## **INTRODUCTION**

The Compliance Director Court order dated December 12, 2012, addresses the reporting duties of the Compliance Director and delineates, among other requirements, the following:

1. "Within 30 days of his or her appointment, the Compliance Director will file a remedial action plan ('Plan') that both addresses deficiencies that led to noncompliance and explains how the Plan will facilitate sustainable compliance with all outstanding tasks by December 2013 or as soon thereafter as possible."
2. "Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits. In developing these benchmarks, the Compliance Director will consult with the Monitor, Plaintiffs, the Mayor, the City Administrator, the Chief of Police, the OPOA, and, as necessary, subject-matter experts to ensure that the benchmarks are consistent with generally accepted police practices and national law enforcement standards."
3. "Beginning on May 15, 2013, and by the 15th of each month thereafter, the Compliance Director will file a monthly status report that will include any substantive changes to the Plan, including changes to persons responsible for specific tasks or action items, and the reasons for those changes. The monthly status reports will also discuss progress toward achieving the benchmarks, reasons for any delayed progress, any corrective action taken by the Compliance Director to address inadequate progress, and any other matters deemed relevant by the Compliance Director."

On April 3, 2013, the Court issued an order extending these deadlines as follows:

1. The Compliance Director will file a remedial action plan on or before May 1, 2013.
2. The Compliance Director will file a list of benchmarks on or before May 31, 2013.
3. The Compliance Director will begin filing monthly reports on July 1, 2013, and reports will be due on the 1st of each month thereafter."

## **SIGNIFICANT EVENTS IN AUGUST**

1. The Compliance Director met with the City Administrator to discuss the necessity of filling funded OPD vacant civilian positions that are vital to their efforts to address violent crime.
2. The Compliance Director's staff chaired a meeting with OPD regarding the OPD crime lab's Sexual Assault Response Team (SART) kit unprocessed backlog. Also discussed were the lab's accounting of SART inventory, human and technology resources available to lab personnel, and processes for ultimately examining SART evidence. The overall objective is to enter evidence into the FBI's Combined DNA Index System (CODIS). Additional high priority work is needed to reconcile OPD data and priorities with the District Attorney's Office and in identifying funding sources for outsourcing the SART kits and other backlogged DNA evidence. Human, technology, and funding resources necessary for enforcement and follow-up on current and future positive CODIS hits must also be identified.<sup>1</sup>
3. The Compliance Director's staff met with OPD leadership, members of the Independent Monitor's staff, and Sierra Systems representatives to discuss the present capacity and the future direction of the PAS2 project. (NOTE: PAS and PAS2 are acronyms used to identify the existing OPD Personnel Assessment System (PAS) and the replacement system (PAS2) currently in the early stages of development. These systems provide a computerized officer performance monitoring capability to OPD.) The Compliance Director's staff also participated in a "PAS2 to NSA Gap" meeting involving Sierra Systems, the City, and OPD. The purpose of this meeting was to further refine what OPD wants as an "end product" in the new system.
4. The Compliance Director's staff met with a subject matter expert regarding the history of the current Oakland radio system, its equipment, and infrastructure. The Compliance Director's staff also attended and participated in the next-in-series meeting regarding the side-by-side Oakland/East Bay Regional Communications System Authority (EBRCSA) radio system comparison test, which the City's Department of Information Technology was directed to complete by the Oakland City Council.

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<sup>1</sup> An OPD internal audit of the current inventory of kits in OPD's custody was also reviewed but has not yet been validated. Additional work is necessary to: reconcile OPD data and prioritization of backlogged analysis with the District Attorney's Office, procure funding for outsourcing of contract SART and other DNA analysis, and prioritize SART analysis, other DNA analysis, and investigative/enforcement follow-up on current backlogged and future positive CODIS hits (human, technology, and funding resources). OPD has accounted for their volume of backlogged SART kits which must be analyzed for DNA evidence purposes. In addition to SART kits, a large volume of biological evidence which may contain DNA evidence separate from SART kits is pending analysis. A DNA analysis contractor has been identified. At the time of this writing, available funding has not been identified for purposes of contract analysis.

5. The Compliance Director's staff attended and evaluated four Force Review Boards. An assessment of the boards, highlighting a number of concerns and suggestions, was written and shared with the Chief of Police.
6. The Compliance Director and staff attended and evaluated two police officer trainee hiring meetings chaired by the Chief of Police or a member of his executive staff. An assessment of the process used was written and provided to the Chief.
7. The Compliance Director and staff facilitated an all-day OPD executive leadership team retreat. The intent of this retreat was to collectively identify and prioritize the operational, administrative, and logistical responsibilities necessary to more effectively address violent crime.
8. The Compliance Director and staff met with OPD's Chief and senior staff to discuss obstacles to hiring sworn and civilian full-time equivalent (FTE) positions, and obstacles to promotions.
9. The Compliance Director's staff reviewed the responses which OPD received from their Request for Proposal (RFP) for Negotiated Settlement Agreement (NSA)-required internal audits. Feedback was provided to OPD from the Compliance Director.
10. The Compliance Director's staff reviewed and approved the DNA Analysis Contract.
11. The Compliance Director and staff facilitated a meet-and-confer with the OPD and the Oakland Police Officers' Association (OPOA) on the draft revision of the Crowd Control Policy, helping them come to an agreement in areas of initial differences. The Compliance Director also participated in a meet-and-confer session with NSA/AMOU plaintiffs' attorneys, OPD, and City representatives regarding the proposed revisions to the Crowd Control Policy.
12. The Compliance Director and staff worked with OPD and the City regarding revisions, considerations, and updates for:
  - Department General Order (DGO) H-7 (DNA evidence).
  - Customer Service training.
  - Use of Force (UOF) training.
  - Internal Affairs Division training.
  - Criminal Investigations Division (CID) investigator training.
  - The proposed CID re-structured organization chart.
  - Filling the vacant, funded position for the OPD Technology Manager.
  - The proposed classification of the PAS2 supervisor.

- Advancing the process to ultimately incorporate subject matter experts (SMEs) into various areas where the Compliance Director determines that outside expertise is necessary to continue OPD's efforts to gain NSA compliance and to implement preferred practices.
- Reviewing and approving IAD policy updates and training bulletins.
- Continuing the Compliance Director's efforts to revise OPD's ongoing personnel reassignments, IAD investigation improvements, and IAD complaint processing.
- Continuing the Compliance Director's efforts to improve tactical resource deployment, equipment purchases for CID, recruitment of lateral police officers from other agencies, and acquire web-based management and policy resources (Lexipol).
- Distributing an extensive subject and organizational resource list for OPD executives and command personnel.
- Stop data collection and analysis.
- The testing, hiring, background investigation and training of police officer recruits.

## **JULY 2013 BENCHMARKS MISSED**

### **AND**

## **AUGUST 2013 BENCHMARKS**

Following are the agreed-upon July benchmarks (Benchmarks Missed) and the August benchmarks extracted from the Compliance Director's Benchmarks Plan published May 31, 2013. Each benchmark contains a short summary of progress achieved towards completion during the month of August 2013.

NOTE 1: The identifying benchmark numbers in this summary refer to the corresponding number in the "top twenty" priorities identified in the Benchmark Plan.

NOTE 2: Items identified as "Tasks" refer to specific non-compliant or partially compliant items from the Independent Monitor's quarterly reports of OPD compliance with the Negotiated Settlement Agreement.

NOTE 3: Items NOT identified as "Tasks" are items identified and inserted in the benchmark process by the Compliance Director.

NOTE 4: For purposes of this report, the Compliance Director considers policy modifications to be a three-part process. Part one of this process is the OPD drafting/modification and Compliance Director/Monitor review/approval of the policy document. Part two is the development and approval of OPD training bulletins and training syllabi supporting the newly revised/approved policy. Part three is documentation of completion of required training and policy implementation.

NOTE 5: Each benchmark in the following list includes steps the Compliance Director deems necessary for OPD to gain compliance with each benchmark. Only when OPD demonstrates that all steps listed have been satisfactorily achieved will the benchmark be considered to be "completed." Items identified as NSA-related Tasks will then be referred to the Independent Monitor for final compliance review.

NOTE 6: "Progress" entries for each benchmark are now color-coded. **Blue** highlights indicate benchmark completion. **Red** highlights indicates that the benchmark remains pending, with a revised due date set.

## **JULY 2013 BENCHMARKS MISSED**

### **BENCHMARK #15**

Submit backlogged DNA samples to the FBI's Combined DNA Index System database (CODIS). **Complete implementing the procedures and protocols necessary to permit outsourcing of all backlogged unprocessed DNA kits.**<sup>2</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Completed Compliance Director review and approval of procedures and protocols.

**JULY PROGRESS:** PENDING. OPD draft procedures and protocols have been submitted to the Compliance Director for review. This review will be completed in August. The completion date for this benchmark has been reset to 30 August 2013.

**AUGUST PROGRESS:** PENDING. OPD draft procedures and protocols have been submitted to the Compliance Director in a timely fashion. On August 21, 2013, the Compliance Director's Office met with OPD executive and command staff members, and representatives from the OPD laboratory. Issues regarding Sexual Assault Response Team (SART) kits and non-SART kit biological evidence were discussed, including matters associated with contracting DNA analysis. OPD draft procedures and protocols are expected to be approved by the Compliance Director the week of September 1, 2013.

### **BENCHMARK #18**

Purchase and deploy modern crowd control weapons/munitions, TASERs, and additional PDRDs - **Complete update of the less lethal weapons/munitions use policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

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<sup>2</sup> These refer to all DNA samples or evidence which may contain DNA evidence, e.g. not only Sexual Assault Response team (SART) kits.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Compliance Director review and approval of the revised Department Crowd Control and Crowd Management Policy is necessary prior to the completion of this Benchmark.
- 2) Following approval of the revised Crowd Control and Crowd Management Policy, OPD is required to submit revisions to the less lethal weapons/munitions policy for Compliance Director review and approval. Compliance Director approval of the revised less lethal weapons/munitions policy is also necessary for completion of this benchmark.
- 3) Upon Compliance Director approval of both the revised crowd control policy and the revised less lethal weapons/munitions policy, new benchmarks will be established for completion, review, and approval of supporting training materials. Additional future benchmarks will also be established for completion of necessary training and full policy implementation.

**JULY PROGRESS:** PENDING. Completion of this policy revision is dependent upon completion of the current initiative to revise OPD's Crowd Control and Crowd Management Policy. This policy revision is being developed in cooperation with the plaintiffs' attorneys and other stakeholders and is at about the 90% completion point. Upon completion of the Crowd Control Policy redraft and its review/approval by the Compliance Director, the final revisions to the less lethal weapons/munitions use policy can be completed and sent to the Compliance Director for review.

The benchmark for completion of this item has been reset for 30 August 2013.

**AUGUST PROGRESS:** PENDING. Completion of the Less Lethal and Specialty Impact Munitions (SIM) policy revision, referred to as Training Bulletin III-H, is dependent upon completion of the current initiative to revise OPD's Crowd Control and Crowd Management Policy. This policy revision is being developed in cooperation with the plaintiffs' attorneys and other stakeholders, and is at about the 98% completion point. A meet-and-confer meeting requested by the National Lawyers Guild and the American Civil Liberties Union with the City on the remaining issues was held on August 30, 2013. All but one of the remaining issues was resolved. That issue has been referred back to OPD for further discussion. Upon completion of the Crowd Control and Crowd Management Policy redraft, and its review/approval by the Compliance Director, the final revisions to Training Bulletin III-H can be completed and sent to the Compliance Director for review.

### **BENCHMARK #19**

Develop needed training programs - **Increase Patrol level use of force training for Officers by 20 hours per year.**<sup>3</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a training proposal for review. Approval of this proposal is necessary to achieve completion of this benchmark

**JULY PROGRESS:** PENDING. Conversations between OPD and the Compliance Director's staff have led to the realization that a blend of training is more realistic than simply depending on increased simulator (MILO) training to achieve the desired goal of providing patrol officers with increased capabilities to deal with potential violence under stress short of using deadly force. OPD's Training Division will craft a proposal to blend increased simulator time and reality-based training. Upon the Compliance Director's review and approval of this revised training plan, a revised benchmark timeline for development and implementation of this training will be crafted and inserted in the updated Benchmark Plan.

The first step is the development/presentation of the OPD blended training proposal. A benchmark for this to be completed has been set as 30 August 2013.

**AUGUST PROGRESS:** PENDING. A revised training proposal and a suggested source of reality-based training were submitted in a timely fashion. The Compliance Director responded with a variety of questions regarding the curricula, instructor qualifications, and manner of presentation. The OPD subsequently provided additional information to the Compliance Director late in the month. This supplemental information is currently under review by the Compliance Director. Communications regarding the crafting of lesson plans and instructor characteristics have been exchanged between the Compliance Director's office and OPD.

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<sup>3</sup> The original benchmark was to increase training to 20 hours per year. In consultation with the OPD, the Compliance Director has determined that a more appropriate benchmark would be to increase training by 20 hours per year, so that officers receive an additional 20 hours per year of training in this critical area. The OPD has agreed to this change.

## **AUGUST BENCHMARKS**

### **BENCHMARK #7**

Task 16: Supporting IAD Process – Supervisor/Managerial Accountability - **Completion of additional training regarding Departmental expectations from the IAD staff.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a copy of the training curricula delivered, and copies of five randomly selected officer training records showing completion of this training.

**AUGUST PROGRESS:** PENDING. Additional training requirements directed by the Compliance Director's staff were factored into the latest draft of the lesson plans. This draft is pending review and approval, which is expected to occur the week of September 1, 2013.

### **BENCHMARK #9a**

Task 25: - Use of Force Investigations and Report Responsibility - **Finalize the new Use of Force (UOF) Policy K-3.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

#### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.
- 2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.
- 3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. The draft policy revision was provided to the Compliance Director in a timely manner and on schedule. The proposed revision is pending approval by the Compliance Director. A meet-and-confer meeting requested by the National Lawyers Guild and the American Civil Liberties Union with the City on

the remaining issues of the Crowd Control and Crowd Management policy was held on August 30, 2013. All but one of the remaining issues was resolved. That issue has been referred back to OPD for further discussion. Upon completion of the Crowd Control and Crowd Management Policy redraft, and its review/approval by the Compliance Director and the Independent Monitor, the final revisions to the less lethal weapons/munitions use policy can be completed and sent to the Compliance Director and the Independent Monitor for review. The less lethal weapons/munitions use policy, which is also the subject of Benchmark #18, is the only outstanding item in Policy K-3.

#### **BENCHMARK #9b**

Task 25 - Use of Force (UOF) Investigations and Report Responsibility – **Fill the existing vacant UOF Coordinator position.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a copy of the document making this personnel assignment.

**AUGUST PROGRESS:** COMPLETED. The position has been filled and corroborating documentation supplied to the Compliance Director.

#### **BENCHMARK #10**

Task 30: Executive Force Review Board (EFRB) - **Complete the review of the revision of policy K-4.1 (EFRB). Implement the revised policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.
- 2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.
- 3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. OPD provided the Compliance Director with a proposed revision of the draft policy in a timely manner and on schedule. The revised draft is extensive and addresses a function in the Department which directly relates to issues of force and accountability. The significance of the policy, coupled with the observations of the Compliance Director's staff who have attended Force Review and Executive Force Review Boards requires a diligent and studious review.<sup>4</sup> Due to the infrequent occurrence of these boards, more time is necessary for comprehensive review of this process.

### **BENCHMARK #12**

Task 40 - Personnel Assessment System (PAS) – Purpose – **Complete personnel training.**

**OPD RESPONSIBLE PARTY:** Deputy Chief E. Breshears.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a copy of the training curricula delivered, and copies of five randomly selected officer training records showing completion of this training.

**AUGUST PROGRESS:** PENDING. Benchmarks #13a and 13b (revisions of Department General Order D-17 and Bureau of Risk Management Policy 13.01) must be completed before the training required by this benchmark can be designed and delivered.

### **BENCHMARKS #13a AND 13b**

**#13a:** Task 41- Use of Personnel Assessment System (PAS) - **Revise Department General Order D-17 (PAS Policy).**

**OPD RESPONSIBLE PARTY:** Deputy Chief E. Breshears.

**#13b:** Task 41- Use of Personnel Assessment System (PAS) – **Revise Policy 13.01 - Bureau of Risk Management Policy and Procedures.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

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<sup>4</sup> The Compliance Director and staff have attended a variety of Force Review and Executive Force Review Boards. The boards attended in August were deficient, as were others dating back to the Occupy Oakland Report of June 2012. Memoranda expressing concerns and recommendations in areas ranging from preliminary force investigations to objective fact presentation about the August 2013 boards were prepared and forwarded to the Chief of Police.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE (WITH BOTH BENCHMARKS):**

- 1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.
- 2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.
- 3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. OPD provided the Compliance Director with a proposed revised policy as it relates to the current PAS. The revision was provided in a timely manner and on schedule. OPD reported that this proposed revision had been provided to all parties as required. Two issues have surfaced requiring supplemental review and probable revision of the PAS policy, which were not known until after the revision was submitted. First, information which may impact the current PAS policy has been provided at workshops conducted by Sierra Systems.<sup>5</sup> Second, a meeting with OPD executive staff, the Compliance Director's staff, and the Independent Monitor's staff revealed information about internal OPD processes which, if verified, will require revision to the proposed policy. The information has been provided to OPD executive staff, who will be responsible for decisions regarding further revisions, submission to all parties to the NSA, and ultimate submission to the Compliance Director for review and approval.

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<sup>5</sup> The City of Oakland has contracted with Sierra Systems for the purpose of developing a Request for Proposal relevant to the new PAS2 technology system. A significant part of the development process requires workshop discussions with stakeholders. One example is revision regarding the role of supervisors and the PAS Board when determining when personnel monitoring or interventions are considered necessary.

**BENCHMARK #20**

Implement sequential double-blind photo lineup procedures – **Complete program implementation.**

**OPD RESPONSIBLE PARTY:** Assistant Chief P. Figueroa.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a copy of the training curricula delivered, and copies of five randomly selected officer training records showing completion of this training.

**AUGUST PROGRESS:** [COMPLETED.](#) Supporting documentation has been provided to the Compliance Director.

## **SUMMARY OF AUGUST PROGRESS**

11 benchmarks

2 benchmarks completed

9 benchmarks pending completion, with benchmark dates reset for September

During the past month, this office has become more acutely aware of the complexities of achieving final benchmark approvals and the processes necessary to achieve this desired outcome. Although only 2 out of 11 benchmarks were completed, OPD has continued to make progress and appears to be on track to completing the benchmark deadlines reset for September.

## **CONCLUDING THOUGHTS**

After six months of on-site observation, coupled with insight gained from the Frazier Group investigation of the events of October 25, 2011 (Occupy Oakland), this office has identified a substantial number of Department deficiencies. These deficiencies impact OPD's operational capacities and the ability of the City and the police department to achieve sustained NSA compliance. They also impede the adoption and implementation of current preferred policing practices. These deficiencies and inadequacies serve as barriers to delivering effective public safety services, addressing violent crime, and sustaining compliance as required by the Court's order. Crafting sustainable and durable programs that facilitate the delivery of these essential city services has become a high priority for the Compliance Director.

In the months ahead, we will continue our efforts to work with all parties and to recognize the different requirements that the stakeholders bring to the table. We firmly believe that OPD's new command staff is trying hard to deliver necessary program improvements, and that the City has shown an increasing level of cooperation. Given these promising signs, we feel that satisfactory progress is being made toward achieving the goals of the Court.