

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

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5 DELPHINE ALLEN, et al.,
6 Plaintiffs,
7 v.
8 CITY OF OAKLAND, et al.,
9 Defendants.

MASTER CASE FILE
NO. C00-4599 TEH

ORDER MODIFYING
COMPLIANCE OVERSIGHT
MODEL

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11 As the parties are well aware, the remedial phase of this case has extended far longer
12 than originally anticipated and far longer than the Court believes should have been necessary
13 had Defendants consistently acted with diligence to implement the reforms they agreed to
14 over eleven years ago. The parties' Negotiated Settlement Agreement, entered as an order of
15 the Court on January 22, 2003, was designed to effectuate reforms within five years, with a
16 possible two-year extension. Years later – and following two further Memoranda of
17 Understanding between the parties and the appointment of a second monitoring team –
18 Defendants remain out of compliance with a number of significant tasks.

19 On October 4, 2012, Plaintiffs filed a motion to appoint a receiver based on their
20 belief that a monitor alone was insufficient to bring Defendants into compliance. While that
21 motion was pending, the parties reached an agreement with the assistance of Magistrate
22 Judge Nathanael Cousins and jointly proposed that the Court appoint a Compliance Director
23 in lieu of considering Plaintiffs' motion to appoint a receiver. The Court approved the
24 parties' agreement, with modifications, on December 12, 2012. The Compliance Director
25 position was designed to last a minimum of one year and at least until Defendants had
26 achieved full compliance with the settlement agreement. After conducting a series of
27 interviews, the Court appointed Thomas C. Frazier as Compliance Director, effective
28 March 11, 2013.

1 As we approach the one-year anniversary of Mr. Frazier's appointment, the Court has
2 given serious consideration to whether the Compliance Director/Monitor model is the best
3 approach to moving Defendants into compliance as quickly and sustainably as possible. At
4 the heart of the dispute giving rise to the creation of the Compliance Director position lies the
5 premise that compliance has not been more quickly attained because the Monitor lacks
6 directive authority to ensure that Defendants correct identified deficiencies. The parties
7 agreed to grant such authority – broad, essentially receiver-like powers in areas related to the
8 negotiated reforms, including procurement authority for individual expenditures not
9 exceeding \$250,000 and the power to discipline, demote, or remove the Chief of Police – to a
10 Compliance Director to be appointed by the Court. Although the Court considered granting
11 these additional powers to the Monitor instead of creating a second position, it endorsed the
12 parties' agreement to vest such powers in a separate individual. However, this arrangement
13 has proven to be unnecessarily duplicative and has been less efficient and more expensive
14 than the Court contemplated, and the Court finds that it would be more appropriate and
15 effective to now concentrate the powers of the Compliance Director and Monitor into one
16 position.

17 Accordingly, with good cause appearing, IT IS HEREBY ORDERED that:

- 18 1. The Court's appointment of Thomas C. Frazier as Compliance Director will
19 terminate on **March 10, 2014**.
- 20 2. Effective immediately, all authority previously vested by the Court in Mr. Frazier
21 is revoked and hereby transferred to the Court-appointed Monitor, Robert S. Warshaw, until
22 otherwise ordered.
- 23 3. Between now and the expiration of his appointment, Mr. Frazier shall close down
24 his office in an orderly manner and work closely with the Monitor to ensure a smooth
25 transition and Defendants' uninterrupted progress.
- 26 4. Mr. Frazier and the Monitor shall immediately discuss all work in progress by the
27 Compliance Director's office, and the Monitor shall determine what portion of that work is
28 essential to moving the Department toward sustainable compliance or for an orderly

1 transition. Individuals paid hourly at Mr. Frazier's direction, including subject matter
2 experts, shall immediately cease all activity unless that work is deemed essential and
3 Mr. Frazier is unable to personally perform such work. All outstanding invoices for hourly
4 work and expenses must be submitted for the Court's approval on or before **March 10, 2014**.

5 5. Beginning on **April 15, 2014**, the Monitor shall file bimonthly reports discussing
6 Defendants' progress. Prior to filing each bimonthly report, the Monitor shall provide the
7 parties and Intervenor Oakland Police Officers' Association an opportunity to review the
8 report for the sole purpose of discussing with the Monitor whether any information is
9 confidential and subject to filing under seal. These reports will not replace the Monitor's
10 quarterly reports, which will continue to provide the official record of Defendants' progress.


11 6. The Monitor shall discuss with the parties necessary modifications to his contract
12 as a result of the expansion of his powers and duties, including whether he needs to have a
13 greater on-site presence and the amount of additional compensation that would be
14 appropriate. The Court expects the additional compensation, including travel expenses and
15 costs associated with any assistants, not to exceed \$150,000 annually. Any disputes
16 regarding the contract modifications will be resolved by the Court.

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18 **IT IS SO ORDERED.**

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20 Dated: 02/12/14



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

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