

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**GEOFFREY CALHOUN, et al.,** )  
 )  
 **Plaintiffs,** )  
 )  
 v. )  
 )  
 **RICHARD PENNINGTON, et al.,** )  
 )  
 **Defendants.** )  
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**CIVIL ACTION FILE NO.  
1:09-CV-3286-TCB**

**SPECIAL MASTER QUARTERLY COMPLIANCE REPORT  
DATED APRIL 12, 2017**

COMES NOW, Joe D. Whitley, the appointed Special Master in the above-referenced case, in furtherance of the duties imposed by this Court's Order entered June 22, 2016 [Dkt. No. 309] (the "Special Master Order"), and submits this Special Master Quarterly Compliance Report dated April 12, 2017 (hereinafter, the "4/12 Report") setting forth the Special Master's compliance findings as of the date of this 4/12 Report:

**PROLOGUE**

On September 29, 2016, the Special Master filed the Special Master Quarterly Compliance Report dated September 29, 2016 [Dkt. No. 324] (the "9/29

Report")<sup>1</sup>, and on December 30, 2016, the Special Master filed the Special Master Quarterly Compliance Report dated December 30, 2016 [Dkt. No. 325] (the "12/30 Report" and together with the 9/29 Report, the "Past Compliance Reports"). In the Past Compliance Reports, the Special Master preliminarily found, except as set forth otherwise therein, that the City had complied or attempted in good faith to comply with the requirements of the Court Orders after entry of the 2015 Order and generally reserved final judgment, provided the Special Master would be re-visiting all preliminary findings in conjunction with future reports, pending discovery and evaluation of additional facts.

As more fully explained in the Past Compliance Reports, this approach was based on an assumption of continued commitment by the City towards achieving a consensus of compliance with the Court Orders through ongoing efforts under the Consent Order Setting Forth Initial Special Master Monitoring, Discovery, and Dispute Resolution Procedures [Dkt. No. 323], as subsequently modified by the Consent Order Modifying Limited Provisions of Consent Order Setting Forth Initial Special Master Monitoring, Discovery, and Dispute Resolution Procedures [Dkt. No. 339] (hereinafter, collectively, the "Procedures Order").

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<sup>1</sup> All capitalized terms not otherwise defined herein shall be attributed the same meanings attributed to them in the 9/29 Compliance Report.

Over the past three months, the Special Master has continued to perfect the record related to compliance with the assistance of the parties. Below are the Special Master's limited findings as of this 4/12 Report regarding compliance with the Court Orders, with a particular focus on the time period between the 12/30 Report and the filing of this report, provided the Special Master will be further investigating, revisiting, and/or supplementing all findings in the next quarterly compliance report, due in June 2017, and those that follow.

### **METHODOLOGY**

In conducting the Special Master's independent investigation and preparing this report, the Special Master has given consideration to: (i) relevant pleadings, filings, and discovery in the above-styled case, including, but not limited to, the Court Orders and the Procedures Order; (ii) various party and non-party documents, information, and accounts requested and received by the Special Master as relevant to the determination of compliance with the Court Orders; and (iii) the parties' direct representations, as officers of the Court, to the Special Master, as an officer of the Court.

Where possible, evidence has been reviewed according to a preponderance of the evidence standard to make a preliminary determination about compliance; however, no formal evidentiary hearing has been requested or held, and the Special

Master has not had an opportunity to consider all potentially relevant evidence. Additionally, in some instances, the Special Master explicitly finds that additional evidence or time is needed to formulate a complete opinion on compliance. Therefore, these limited findings are subject to further review and revision, and no party is deemed to have waived any evidentiary rights or objections.

Ultimately, the Special Master intends to move to more formal briefings and hearings in conjunction with efforts to apply applicable Eleventh Circuit compliance standards and additional finality; however, at this time, the Special Master continues to believe that additional and more frequent informal meetings among the parties will continue to cater to a consensus of complete compliance, as contemplated by the Special Master Order and as discussed more fully below.

## **FINDINGS**

For purposes of this 4/12 Report, the Special Master is organizing compliance findings by topic, as referenced in the 2010 Order and the 2011 Order, with references to related issues from the 2015 Order. Utilizing this approach, the Special Master aims to provide a more comprehensive and wholesome analysis of related compliance issues arising out of the Court Orders. The Special Master has attempted to accurately paraphrase the requirements of the Court Orders and understands and acknowledges that compliance with the Court Orders -- not the

Special Master's short form interpretations thereof -- is the relevant inquiry. Accordingly, nothing in this 4/12 Report, including any paraphrased language, is intended to (nor shall it) modify, alter, or amend any of this Court's Orders. To the extent there is any conflict, the Court Orders prevail and are controlling.

**1. REVOCATION OR AMENDMENT OF UNCONSTITUTIONAL POLICIES [2011 Order at Ex. A, ¶ 1] AND RELATED ISSUES FROM 2015 ORDER [2015 Order at ¶¶ 4(a), 4(b), 7, and 8].**

As more particularly set forth in the Past Compliance Reports, to the best of the Special Master's knowledge, the City timely complied with the technical requirements of the Court Orders referenced above, and the Special Master is not presently aware of any disputes related to the revocation and/or amendment of unconstitutional policies, as required by the Court Orders.

Notably, on January 6, 2017 and on March 1, 2017, the City of Atlanta provided affidavits of APD Police Chief Erika Shields attaching copies of all Standard Operating Procedures ("SOPs") related to the above-captioned matter, which confirm that the SOPs attached thereto accurately reflect the SOPs then in effect and that no changes had been made to those particular SOPs on or after the date they were signed into effect by former Police Chief George N. Turner on May 29, 2015 in response to the 2015 Court Order. Further, on or around March 27, 2017, the Special Master received written confirmation from Plaintiffs' Counsel

confirming that "Plaintiffs have no comment about the affidavit submitted by the Chief."

However, the Special Master notes that the aforementioned affidavits are unclear on their face as to whether all APD SOPs have been provided, as contemplated by the Procedures Order at paragraph 4(A) and as required to make a final determination as to compliance with the 2011 Order. Upon review, the Special Master *did* receive an email from the City seeking clarification as to whether all APD SOPs were requested. Accordingly, consistent with the Special Master's discussion during an April 3, 2017 *ex parte* conference with the City, the Special Master hereby clarifies and requests that all SOPs be provided in future productions, together with any additional or amended affidavits that may be necessary to address the requirements set forth by paragraph 4(A) of the Procedures Order and to monitor compliance with the requirements set forth at Ex. A, ¶ 1 of the 2011 Court Order and at ¶¶ 4(a), 4(b), 7, and 8 of the 2015 Order. This shall clarify the scope of paragraph 4(A) of the Procedures Order going forward until future notice.

In sum, additional fact finding and scrutiny are necessary before the Special Master can find that the ADP SOPs, as amended, have fully implemented "all [] revisions required by [the Court Orders]." The Special Master believes a finding

of compliance eventually will be appropriate and forthcoming; however, the Special Master again withholds or defers any final finding out of necessity at this time. This issue will be re-visited in conjunction with future quarterly reports.

**2. IDENTIFICATION REQUIREMENT FOR APD OFFICERS [2011 Order at Ex. A, ¶ 2].**

As set forth in the Past Compliance Reports, disputes existed and still exist as to whether the City has achieved complete compliance with respect to the following requirement of the 2010 Order and 2011 Order:

**2. Identification Requirement for APD Officers**

The City of Atlanta shall require all Atlanta police officers who are in uniform, other than a rain slicker or traffic direction vest, to wear a conspicuously visible nametag, and to require any Atlanta police officer who is in uniform or has displayed a badge or other indicia of police authority (such as a police vest, etc.), to identify himself by name and badge number upon request at some point before the end of an encounter with a civilian.

In conjunction with development of the Procedures Order, the parties agreed to implement and monitor additional procedures that would aid in achieving a consensus of complete compliance with regard to the identification requirements for APD Officers in the Court Orders, including, but not limited to, the ones set forth at paragraph 4(D) of the Procedures Order. Along these lines, on or around January 3, 2017, the City provided to Plaintiffs' Counsel and the Special Master a

schedule of routine daily uniform inspections and addresses for the inspections by APD zone, affording the Special Master and/or Plaintiffs' Counsel the opportunity to attend daily uniform inspections for monitoring purposes contemplated by the Court Orders.

On March 9, 2017, the Special Master sent staff members to inspect a Zone 2 daily roll-call uniform inspection supervised by Sergeant A. P. Taddei, Lieutenant A. Singh, and Major Barry Shaw, among others. At the inspection, the Special Master's staff observed one individual wearing an APD issue bullet-proof vest but no conspicuously visible name tag. This individual was not actively participating in but was present at the APD offices during roll-call. All other APD personnel present for or participating in daily roll call were confirmed by the Special Master's staff and by APD supervisors to be wearing conspicuously visible name tags in conjunction with the daily roll call uniform inspection.

After the inspection, the Special Master's staff interviewed one or more Zone 2 supervisors related to, among other things, (i) standard practices related to compliance with the identification requirements, (ii) ramifications of an officer's failure to wear a conspicuously visible name tag during daily roll-call inspections, and (iii) the presence of somebody without a conspicuously visible name tag. The Special Master's staff was informed that the standard practice is to inspect every

officer's name tag during his/her respective roll call and the ramification for failure to wear a conspicuously visible name tag during roll-call is to be sent home without pay. When asked about the person present without a name tag, one or more supervisors confirmed that the individual in question was not a member of APD, but instead an intern, who must wear a bullet proof vest by law but would not be covered by the Court Orders and would not be allowed to wear an APD badge or other insignia of APD authority. An intern is not a sworn APD officer.

Based on this initial inspection and report, the Special Master is generally satisfied with the chain of command supervision of the name tag requirements observed at the March 9, 2017 daily roll call inspection. Nonetheless, the Special Master will continue to inspect daily roll call inspections and explore other situations contemplated by the Court Orders, including any additional concerns raised by Plaintiffs.<sup>2</sup>

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<sup>2</sup> On or around November 6, 2016, Plaintiffs' Counsel provided a specific example of an APD officer who was photographed by Plaintiffs' Counsel and appears to be in APD uniform, other than a rain slicker or traffic direction vest, without a conspicuously visible nametag. Notably, however, Plaintiffs' Counsel *did not* provide identifying information related to the individual, and therefore, the Special Master has limited ability to investigate further. As set forth in this report, the Special Master continues to assess compliance with the identification requirements set forth in the Court Orders utilizing the powers available to him under the Special Master Order and the Procedures Order. Based on presently available information, the Special Master believes that the situation identified by Plaintiffs' Counsel on or around November 6, 2016 was most likely an isolated occurrence. If Plaintiffs' Counsel have reason to believe it was not an isolated occurrence, the Special

By way of example, first, the Special Master has requested a schedule of the more robust, periodic uniform and nametag inspections required by paragraph 4(D)(ii) of the Procedures Order. The Special Master was advised by the City that these inspections are not scheduled in advance, to preserve the element of surprise; however, the City has agreed to coordinate one or more inspection(s) with the Special Master's schedule. The Special Master will coordinate directly with Major McGhee of the APD. Second, the Special Master would like to review and hereby requests (on a prospective basis) that the City provide to the Special Master and Plaintiffs' Counsel any written records of or related to the paragraph 4(D)(ii) nametag inspections, to assist with the Special Master's monitoring efforts related to same, including, but not limited to, any completed Watch Commander's Roll Call Checklists and/or Roll Call Assignment Sheets, and any other documentation that tends to confirm (or not to confirm) compliance with the identification requirements. Third, the Special Master hereby requests that the City provide records sufficient to identify approved "second jobs" or "extra jobs" for APD officers and the locations thereof, including, but not limited to, access to the field inspection team monitoring same, as contemplated by paragraph 4(D)(iii)(2) of the Procedures Order. Fourth, the Special Master hereby requests an opportunity for

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Master hereby requests from Plaintiffs' Counsel any additional information that can be provided so the Special Master may investigate the situation more fully.

inspection of the robust nametag inspections contemplated by paragraph 4(D)(ii) of the Procedures Order as they pertain to one or more "special units" as identified by Major Schierbaum and Captain Klotzer in the Special Master's April 3, 2017 *ex parte* conference with the City and certain other representatives of APD. The Special Master presently intends to continue monitoring compliance with the identification requirements for APD officers and will document his findings to Plaintiffs' Counsel, the City, and this Court.

Generally, however, as of the filing of this report, the Special Master has no basis to believe that the City is not complying with and/or attempting in good faith to comply with the identification requirements for APD officers and therefore again preliminarily finds that the City is in substantial compliance with the same. Notwithstanding these preliminary findings, the Special Master has determined that additional fact finding is necessary before a final finding as to compliance would be appropriate. Accordingly, a final finding of compliance is withheld or deferred out of necessity, pending review of additional evidence by the Special Master, and the issue of complete compliance will be re-visited, as necessary and appropriate, in conjunction with future quarterly reports.

**3. NO INTERFERENCE WITH AUDIO OR VIDEO RECORDINGS [2011 Order at Ex. A, ¶ 3].**

The Special Master does not have sufficient evidence to make a determination related to this requirement and withholds any further discussion until the next quarterly compliance report due in June of 2017. Plaintiffs' Counsel has expressed potential concerns, which need to be investigated further. The Special Master hereby requests an *ex parte* conference with one or more members of the Plaintiffs' Counsel team to discuss compliance concerns related to this particular requirement of the Court Orders. Accordingly, a finding of compliance is withheld or deferred out of necessity, pending review of additional evidence by the Special Master, and the issue of complete compliance will be re-visited, as necessary and appropriate, in conjunction with future quarterly reports.

**4/5. DOCUMENTATION OF WARRANTLESS SEIZURES AND ID CHECKS [2011 Order at Ex. A, ¶¶ 4, 5] AND RELATED ISSUES FROM 2015 ORDER [2015 Order at ¶ 6].**

The Special Master has reviewed the documentation provided relative to the requirement to document warrantless seizures and ID checks and has identified two critical concerns to be addressed. First, the documents/information provided by the City appear to be insufficient to effectively monitor and to make a determination regarding compliance with the above-referenced requirements of the Court Orders. Second, although the documentation is insufficient to effectively monitor

compliance, the Special Master's review and related communications with the parties confirms that the City has not achieved substantial compliance with the requirement to document warrantless seizures and ID checks. However, on the second issue, the Special Master acknowledges that certain provisions of the Procedures Order and related communications have contributed to the City's understanding that they should not train on certain topics related to the above-captioned case unless or until the training programs are approved by Plaintiffs' Counsel. To be clear, Plaintiffs disagree with any notion that the City has been prevented from training on the topic.

The City and Plaintiffs' Counsel have both expressed the desire to expedite a path towards a consensus of complete compliance, including, among potential other strategies, the following: (i) approval and distribution of a "demographic form flowchart" for reference by APD officers in the field as a compliance tool; (ii) approval and distribution of a limited "roll call" training program on the requirement to document warrantless seizures; (iii) approval and distribution of a more robust Calhoun Training covering this topic, among others; and (iv) prospective monitoring of more limited data sets in shorter time intervals to allow for evaluation of the City's compliance and adjustments to the monitoring process on a more frequent basis than originally contemplated by the Procedures Order.

However, there has not been ample time to fully discuss and reach agreement on these matters prior to the filing of this report.

Given the importance of the requirements related to the documentation of warrantless seizures and ID checks to the spirit of the Court Orders, and given both parties' stated desire to achieve a consensus of complete compliance, in lieu of any sanctions, the Special Master is coordinating and requiring the following: (i) Major Schierbaum and his Training Academy team are asked to deliver to a sample recruiting class the "demographic form flowchart" approved by Plaintiffs' Counsel and the "demographic form flowchart" in the format contemplated by the City as discussed at the April 3, 2017 *ex parte* meeting for a test-run; (ii) within two weeks, Major Schierbaum and his team are to provide the Special Master the test data and results from the recruiting class sampling, to be shared with Plaintiffs' Counsel; (iii) contemporaneously with the presentation of the test data and results, Major Schierbaum and his team are asked to present to Plaintiffs' Counsel and the Special Master a proposed "roll-call training" program or agenda for review and approval, separate and apart from the Calhoun Training program; (iv) subject to reasonable objections by the Plaintiffs' Counsel and/or the Special Master within seventy-two hours, the City is directed to disseminate the approved "demographic form flowchart" and "roll-call training" program to all APD personnel as soon as

reasonably possible and to provide documentary confirmation of the roll out to Plaintiffs' Counsel and the Special Master; (v) on Tuesday, April 25, 2017 or Thursday, April 27, 2017 or another date mutually acceptable to the parties, Plaintiffs Counsel, City Counsel, the Special Master, and certain APD representatives present for the April 3, 2017 *ex parte* conference with the Special Master will meet at Director Barrett's 911 Call Center facility to discuss the documents and processes by which Director Barrett, Major Schierbaum, Captain Klotzer, Major Murphy, and Lt. Spann recommend the Special Master and Plaintiffs' Counsel monitor compliance with the warrantless seizure and ID check requirements, including, but not limited to, appropriately filtered CAD (Computer Aided Dispatch) System records, GCIC/NCIC/ACIC records, "before end of shift" demographic forms, supervisor approved demographic forms, and "audit trail" reports related to all demographic forms identifying when, if ever, any changes were made to the demographic forms in the City's systems or databases and what those changes entailed; and (vi) after the meeting at Director Barrett's 911 call center, the City will be required to provide all documentation agreed upon by the parties at said meeting in two week intervals and to discuss any compliance issues in weekly or bi-weekly in-person meetings between the parties and the Special Master to be scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the

Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized representative for each party and any necessary APD representatives. *Please note: Any prospective monitoring requirement is in addition to all other productions required by the other Court Orders, the Procedures Order, or by agreement between the Special Master and the City, until further notice or agreement by the parties.*

**6. "CALHOUN" TRAINING [2011 Order at Ex. A, ¶ 6] AND RELATED ISSUES FROM 2015 ORDER [2015 Order at ¶¶ 1, 2, 3].**

As set forth more fully in the Past Compliance Reports, although there are disputes related to past compliance with the requirements of the Court Orders related to Calhoun Training, the Special Master has been and remains inclined to find that the City has achieved substantial, technical compliance with the past requirements related to Calhoun Training, provided that the City confirm its good faith through completion of the procedures related to future training set forth by the Procedures Order, resulting in a Calhoun Training program with content and in a format acceptable to Plaintiffs to be delivered to all sworn APD employees within the time frames contemplated by the Court Orders for recurrent Calhoun Training, on or before August 17, 2017. This approach is consistent with the parties' prospective focus and approach in the Procedures Order and ongoing collaborative

efforts between the parties. Accordingly, compliance with the Calhoun Training requirements will be revisited in conjunction with future compliance reports.

Notably, the City has agreed to circulate a revised Calhoun Training script on or before April 14, 2017, and the parties are presently scheduled to meet on April 19, 2017 with the Special Master and APD Training Academy team to address any issues related to the then-current content and format of the Calhoun Training script. Upon receipt of the revised script, the Special Master hereby directs Plaintiffs' Counsel to proceed with the "Materials for Consideration" process contemplated by the Procedures Order to the extent possible, including review of the revised script to confirm whether all required material is included.

To the extent all issues are not resolved, the Special Master will expect the parties to discuss any remaining issues in weekly or bi-weekly in-person meetings between the parties, the Special Master, and representatives of the APD Training Academy team to be scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized counsel representative for each party, until the Calhoun Training program has been approved as to format and content by Plaintiffs' Counsel.

**7. TIMELY RESOLUTION OF CITIZEN COMPLAINTS [2011 Order at Ex. A, ¶ 7] AND RELATED ISSUES FROM 2015 ORDER [2015 Order at ¶ 5] AND PROCEDURES ORDER.**

As set forth more fully in the Past Compliance Reports, without making any final findings, the Special Master preliminarily found that the City achieved, at a minimum, technical and substantial compliance with the requirements of the 2015 Order through its initial production and subsequent curing of any apparent deficiencies, if any, related to the OPS spreadsheet. However, disputes existed and still exist as to the City's compliance with certain related requirements of other Court Orders, for example, paragraph 7 of Exhibit A to the 2010 Order, which provides:

**7. Timely Resolution of Citizen Complaints**

The Atlanta Police Department shall investigate and finally adjudicate all citizen complaints of police misconduct of any kind within 180 days of the complaint.

Again, the disputes between the parties appear to relate to two issues. First, there are questions related to the documentation being provided and its effectiveness to monitor compliance. Second, Plaintiffs' Counsel have expressed concerns about the City's substantive compliance (i.e., whether all citizen complaints of police misconduct of any kind are being investigated and adjudicated within 180 days of the complaint).

In conjunction with development of the Procedures Order, the parties agreed to implement and monitor additional procedures that would aid in achieving a consensus of complete compliance with regard to the timely resolution of citizen complaints required by the Court Orders, including, but not limited to, the procedures set forth at paragraph 4(B) of the Procedures Order and various additional procedures put in place at the request of the Special Master after review of initial materials submitted by the City under the Procedures Order and applicable Court Orders.

Based on the City's initial and supplemental submissions to the Special Master and Plaintiffs, the Special Master generally believes and finds, as a preliminary matter, that the City has substantially complied with or attempted to comply in good faith with the additional requirements set forth at paragraph 4(B) of the Procedures Order and related requests from the Special Master, which demonstrates a good faith commitment to accomplishing the end goal of a complete consensus of compliance with the Court Orders. However, this does not necessarily demonstrate compliance with the Court Orders.

Notably, a comprehensive project has been commenced by the Special Master to confirm the date that each OPS "closed file" referenced on the OPS spreadsheets prepared by the City was produced pursuant to paragraph 4(B) of the

Procedures Order and to verify the data set forth on the spreadsheet relative to the requirement in the Court Orders "to investigate and finally adjudicate all citizen complaints of police misconduct of any kind within 180 days of the complaint." *See* 2011 Court Order at ¶ 7. While the review is not complete, the Special Master's initial findings tend to support the Special Master's preliminary finding of compliance inasmuch as some 98.5% of OPS citizen complaint files reviewed by the Special Master were investigated and adjudicated within the required 180-day period. The Special Master will continue the comprehensive review and provide compliance metrics to the parties upon completion of the same.<sup>3</sup> Of course, given the incomplete status of the review, these findings are preliminary.

Notwithstanding the Special Master's preliminary findings, there also remain disputes between the parties as to the full breadth of the requirements related to the resolution of citizen complaints, and the Special Master has determined that additional fact finding is necessary before a final finding as to compliance with the

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<sup>3</sup> Notably, on or around April 3, 2017, the Special Master discussed with certain APD representatives the ongoing project and additional information that could potentially expedite the Special Master's review on a prospective basis; however, the City expressed staffing and budgetary concerns that presently limit the City's ability to agree to any additional voluntary procedures at this time. Accordingly, the Special Master will continue its review based on the documentation presently available but will revisit this issue any time at the request of the City, in an effort to decrease overall costs related to monitoring compliance.

Court Orders would be appropriate.<sup>4</sup> These disputes and the potential ramifications thereof require additional consideration by the Special Master. Accordingly, a final finding of compliance is withheld or deferred out of necessity, pending review of additional evidence by the Special Master, and the issue of complete compliance will be re-visited, as necessary and appropriate, in conjunction with future quarterly reports.

To the extent all issues are not resolved by agreement between the parties, the Special Master will expect the parties to discuss any remaining issues in weekly or bi-weekly in-person meetings between the parties, the Special Master, and representatives of the APD to be scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized counsel representative for each party and any appropriate APD representatives, until any issues related to the compliance requirements have been fully resolved.

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<sup>4</sup> For example, Plaintiffs' Counsel have expressed their position that the requirement to investigate and adjudicate citizen complaints of police misconduct "of any kind" within 180 days of the complaint must be construed literally and has broad application to citizen complaints "of any kind." The City's position has been that the Court Orders must be construed more narrowly.

**8. INVESTIGATION OF OFFICER CONDUCT [2011 Order at Ex. A, ¶ 8].**

The Special Master is not aware of any disputes related to the requirements relative to the investigation of officer conduct but has not fully investigated the matter. Therefore, at this time, while the Special Master believes a finding of compliance is appropriate and will be forthcoming, there is not sufficient evidence to make a final determination related to this requirement, and any further discussion is withheld until the next quarterly compliance report due in June 2017.

**9. MULTI-JURISDICTIONAL TASK FORCE ASSIGNMENTS [2011 Order at Ex. A, ¶ 9].**

The Special Master is not aware of any disputes related to the requirements relative to the multi-jurisdictional task force assignments but has not fully investigated the matter. Therefore, at this time, while the Special Master believes a finding of compliance is appropriate and will be forthcoming, there is not sufficient evidence to make a final determination related to this requirement, and any further discussion is withheld until the next quarterly compliance report due in June 2017.

**10. OTHER REQUIREMENTS OF 2015 COURT ORDER [2015 Order at ¶¶ 9, 10, 11, 12, 13, and 14].**

**A. Paragraphs 9, 10, and 11 of the 2015 Order.**

Paragraphs 9, 10, and 11 of the 2015 Order relate to requests for documents and information in conjunction with efforts to monitor compliance under the Court

Orders. With regard to these requirements, the Special Master finds that the City has generally attempted in good faith to comply with the applicable Federal Rules of Civil Procedure, the Local Rules and Standing Orders of this Court, the Court Orders, and the Procedures Order; however, the Special Master finds that additional coordination and collaboration with APD representatives is necessary to identify the documentation needed to monitor compliance efforts, to streamline monitoring efforts, and to achieve a consensus of complete compliance with the Court Orders. Along these lines, and in an effort to make the monitoring process more transparent and efficient for everyone involved, the Special Master is requiring additional weekly or bi-weekly in-person meetings between the parties and the Special Master to be scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized counsel representative for each party and any necessary APD representatives.

With regard to the specific outstanding document and information requests set forth in Plaintiffs' Counsel's letter dated March 2, 2017, based on April 3, 2017 discussions with APD representatives including Director Barrett, Major Schierbaum, Captain Klotzer, Major Murphy, and Lt. Spann, the Special Master believes and finds that certain documents requested by Plaintiffs' Counsel may and

certain documents may not be appropriate and/or reasonable to monitor compliance with the Court Orders. Instead of requiring the City to produce all of the requested documents, the Special Master is requiring the City to present its recommendation regarding a compliance monitoring program to the Special Master and Plaintiffs' Counsel on Tuesday, April 25, 2017 or Thursday, April 27, 2017 or another date mutually acceptable to the parties, including a review and discussion of the documents referenced in Plaintiffs' letter request dated March 2, 2017, the documents referenced in the Special Master's email request dated March 7, 2017, and the documents discussed during the April 3, 2017 ex parte conference between the City, APD representatives, and the Special Master, including, but not limited to, appropriately filtered CAD (Computer Aided Dispatch) System records, GCIC/NCIC/ACIC records, "before end of shift" demographic forms, supervisor approved demographic forms, and "audit trail" reports related to all demographic forms identifying when, if ever, any changes were made to the demographic forms in the City's systems or databases and what those changes entailed.

As set forth above, after the meeting at Director Barrett's 911 call center, the City will be required to provide all documentation agreed upon by the parties at said meeting in two week intervals and to discuss any compliance issues in weekly or bi-weekly in-person meetings between the parties and the Special Master to be

scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized counsel representative for each party and any necessary APD representatives. *Please note: Any prospective monitoring requirement is in addition to all other productions required by the other Court Orders, the Procedures Order, or by agreement between the Special Master and the City, until further notice or agreement by the parties.*

With regard to the matters set forth in the letter from Plaintiffs' Counsel dated March 10, 2017, the Special Master has investigated the allegations set forth therein and finds that although the original affidavit contained inaccurate statements, there was no intent to deceive by the affiant and/or the City, as confirmed by the amended affidavit. The Special Master's inquiry is ongoing; however, the initial inaccuracies identified by Plaintiffs' Counsel were not and are not material to the Special Master's duties or compliance with the Court Orders. However, the Special Master does encourage the City to increase its attention to detail and quality of review prior to submissions to the Special Master, as an officer of this Court.

Furthermore, the Special Master does believe that additional communication and transparency are necessary and appropriate to achieve a consensus of complete

compliance with the Court Orders. Along these lines, the Special Master encourages the parties to engage in more open discussion of this and other compliance issues in the weekly or bi-weekly in-person meetings between the parties and the Special Master to be scheduled on Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

**B. Paragraphs 12 and 13 of the 2015 Order.**

The Special Master has reviewed the record related to paragraph 12 and finds that the City is generally and technically compliant; however, due to the ongoing nature of the paragraph 12 requirements, a final finding is withheld or deferred out of necessity, and this issue will be re-visited, as necessary and appropriate, in conjunction with future quarterly reports.

The Special Master has reviewed the record related to paragraph 13 and finds that the City fully complied with the requirement of paragraph 13.

**C. Paragraph 14 of the 2015 Order.**

Paragraph 14 of the 2015 Order sets forth the 6-year timeframe contemplated by the 2015 Order and reiterates that the 2015 Order does not overrule, supersede, or otherwise affect the requirements set forth by the 2010

Order and the 2011 Order. Beyond these general concepts, paragraph 14 does not impose any new or additional requirements on the City.

Due to the ongoing nature of the paragraph 14 requirements (for 6 years) and the overall applicability to the other requirements of the Court Orders, the Special Master finds that compliance with paragraph 14 is not presently ripe for compliance and that additional fact finding would be necessary for the Special Master to formulate an opinion and basis therefor as to compliance. Accordingly, a final finding is withheld or deferred out of necessity, and this issue will be revisited, as necessary and appropriate, in conjunction with future quarterly reports.

#### **PRELIMINARY CONCLUSION AND RECOMMENDATION**

The Special Master believes that most, if not all, of the disputes between the parties related to compliance with the Court Orders are the direct result of avoidable communication breakdowns. Recognizing that the burden on the City to perform under the Court Orders and Procedures Order is substantial, the Special Master believes that the quickest path to a consensus of complete compliance is through additional and more effective communications between and among the parties and the Special Master. For this reason, the Special Master is requiring the parties to discuss compliance issues more regularly in weekly or bi-weekly in-person meetings between the parties and the Special Master to be scheduled on

Friday mornings from 9:00 AM to 12:00 Noon at the Law Offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., with attendance required by at least one authorized counsel representative for each party and any necessary APD representatives.

That said, the Special Master is encouraged by the general pattern of compliance established by the record and believes that any concerns will be resolved by more frequent and effective communications that will lead to quicker identification and resolution of compliance-related disputes toward the end goal of a consensus of complete compliance. Along these lines, the Special Master will continue to develop the record related to compliance through additional discovery within the powers set forth by the Special Master Order and requests that the parties immediately make the Special Master aware of any circumstances that would prevent a finding of compliance.

Notably, the Special Master's strong preference remains to avoid re-visiting past issues as counter-productive and detrimental to the larger process unless extraordinary circumstances exist, given the parties' commitment to the approach set forth in the Procedures Order and the continued progress being made consistent therewith. However, the Special Master will not deny any party the opportunity to be heard, upon request, if the parties cannot reach a mutual understanding

regarding the proper resolution of any compliance related matters. Any such requests for a formal hearing should be submitted directly to the Special Master in the form of a motion with appropriate briefing pursuant to the applicable rules of this Court.

In light of the foregoing, the Special Master respectfully recommends that the Court adopt this 4/12 Report, imposing the requirements set forth herein but deferring any further action at this time.

Respectfully submitted by: /s Joe D. Whitley

**JOE D. WHITLEY**

Georgia Bar No. 756150

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*Special Master*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have electronically filed the foregoing SPECIAL MASTER QUARTERLY COMPLIANCE REPORT DATED APRIL 12, 2017 with the Clerk of Court using the Court's CM/ECF system, which will automatically send electronic notification of such filing to all parties through their counsel of record.

This 12th day of April, 2017.

/s/ Joe D. Whitley  
Joe D. Whitley  
Georgia Bar No. 756150

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*Special Master*