

**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.** )  
 \_\_\_\_\_ )

**CIVIL ACTION FILE NO.  
1:09-CV-3286-TCB**

**SPECIAL MASTER QUARTERLY COMPLIANCE REPORT  
DATED JULY 14, 2017**

COMES NOW, Joe D. Whitley, the appointed Special Master in the above-referenced case, in furtherance of the duties imposed by the Court's Order entered June 22, 2016 [Doc. No. 309] (the "Special Master Order"), and submits this Special Master Quarterly Compliance Report dated July 14, 2017 (hereinafter, the "7/14 Report") setting forth the Special Master's compliance findings and recommendations to the Court as of July 14, 2017:

**I. COMPLIANCE REFERENCE CHART AND TABLE OF CONTENTS<sup>1</sup>**

COMPLIANCE TOPIC	LIMITED 7/14 COMPLIANCE REPORT FINDINGS			PAGE
	Compliance Breakdown	Resolved	Unresolved	
<b>1. REVOCATION OR AMENDMENT OF UNCONSTITUTIONAL POLICIES</b>	n/a	X		11-13
<b>2. IDENTIFICATION REQUIREMENT FOR APD OFFICERS</b>	2010 Order		X	14-18
	2011 Order		X	
	Procedures Order		X	
	4/12 Compliance Report		X	
<b>3. NO INTERFERENCE WITH AUDIO OR VIDEO RECORDINGS</b>	n/a	X		19-20
<b>4/5. DOCUMENTATION OF WARRANTLESS SEIZURES AND ID CHECKS</b>	2010 Order		X	20-25
	2011 Order		X	
	2015 Order		X	
	Procedures Order		X	
	4/12 Compliance Report		X	
<b>6. "CALHOUN" TRAINING</b>	n/a	X		25-26
<b>7. TIMELY RESOLUTION OF CITIZEN COMPLAINTS</b>	2010 Order		X	26-31
	2011 Order		X	
	2015 Order		X	
	Procedures Order		X	
	4/12 Compliance Report		X	
<b>8. INVESTIGATION OF OFFICER CONDUCT</b>	n/a	X		31
<b>9. MULTI-JURISDICTIONAL TASK FORCE ASSIGNMENTS</b>	n/a	X		31-32
<b>10. OTHER REQUIREMENTS OF 2015 COURT ORDER</b>	2015 Order		X	32-37
	Procedures Order		X	
	4/12 Compliance Report		X	

<sup>1</sup> The below chart is provided as a demonstrative reference tool and does not modify, amend, or supersede any of the specific compliance findings set forth in this 7/14 Report; however, the chart attempts and intends to accurately reflect the status of compliance as of the date of this 7/14 Report. This chart should not be read alone, but should be reviewed together with the analysis that follows. As indicated within the report, most of the compliance areas require ongoing review and evaluation, and therefore, although a compliance area may be marked as "Resolved" for the limited purposes of this report, this does not mean that compliance has been fully or finally achieved. Instead, a designation of "Resolved" is intended to convey that this area is not a key compliance concern for the limited purpose of this 7/14 Report, provided, compliance will be revisited in future reports.

## II. HISTORICAL RECAP

Approximately one year has passed since Joe D. Whitley was appointed Special Master and charged with certain duties, including: (i) the duty to monitor and enforce compliance with the Court Orders<sup>2</sup>; (ii) the duty to manage and supervise discovery disputes between the parties and work with the parties to address any barriers to compliance; and (iii) the duty to issue written quarterly reports on compliance with the Court Orders. (Special Master Order, Doc. No. 309, ¶¶ 1, 3). For purposes of evaluating the status of compliance at the time of this 7/14 Report, a brief historical recap of efforts and compliance findings to date is appropriate.

### First Three Months

The Special Master was appointed on June 22, 2016. (Special Master Order, Doc. No. 309). At the time of his appointment, the Special Master had very limited knowledge of the key compliance issues in this case. From June 22, 2016 through the submission of the Special Master's first Quarterly Compliance Report dated

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<sup>2</sup> For purposes of this report, "Court Orders" shall collectively refer to this Court's Order entered December 8, 2010 [Doc. No. 265] (if referenced alone, the "2010 Order"), this Court's Order entered December 15, 2011 [Doc. No. 280] (if referenced alone, the "2011 Order"), and this Court's Order entered May 19, 2015 [Doc. No. 289] (if referenced alone, the "2015 Order").

September 29, 2016 [Doc. No. 324] (the "9/29 Report"), the Special Master relied heavily on the parties' counsel to develop an understanding of the key compliance issues, obstacles preventing a mutual consensus of complete compliance, and potential strategies to overcome such obstacles.

Through discussions with all parties and *ex parte* discussions, it became apparent that structure and predictability was needed to help guide the compliance monitoring process. This became the Special Master's primary focus for the first three months of his appointment. (9/29 Report, Doc. No. 324, at pg. 2 "Prologue"). Ultimately, by agreement and compromise, the parties developed an order setting forth initial monitoring, discovery, and dispute resolution procedures that the parties agreed would help the Special Master fulfil his duties to the Court and help establish a consensus of compliance with the Court Orders. Id.

As indicated in the 9/29 Report, it appeared that significant progress had been made by the parties in reaching a consent agreement regarding the various procedures that would aid the parties in achieving a mutual understanding, agreement, and consensus of complete compliance with the Court Orders. Id. Based on the Special Master's report and recommendation, and with the consent of the parties, the Court entered the parties' Consent Order Setting Forth Initial

Special Master Monitoring, Discovery, and Dispute Resolution Procedures [Doc. No. 323] (hereinafter, as modified by subsequent agreement between the parties at Doc. No. 339, the "Procedures Order"). As of this 7/14 Report, the Procedures Order remains in full force and effect.

### **Months Three to Six**

From the time of the 9/29 Report through the filing of the Special Master Quarterly Compliance Report dated December 30, 2016 [Doc. No. 325] (the "12/30 Report"), the parties began collecting documents and implementing the additional procedures set forth in the Procedures Order.

Six months into his appointment, it appeared to the Special Master that the parties remained committed to the intent and spirit of the Procedures Order, and the Special Master gave substantial deference to the City of Atlanta's ("City") apparent commitment to the Procedures Order as demonstrating a "continuing, good faith commitment to achieving a complete consensus of compliance with the Court." (12/30 Report, Doc. No. 325, at pg. 2-4 "Prologue") (internal citations and quotations omitted). Nonetheless, the Special Master reported that certain disputes were emerging between the parties, and the Special Master committed to evaluating the same in the months and quarterly compliance reports to follow. Id.

During the three months leading up to the 12/30 Report, the City undertook significant efforts to produce documents consistent with the requirements of the Procedures Order. However, as of the 12/30 Report, Plaintiffs' Counsel and the Special Master had not had time to fully evaluate such productions or to determine how they might affect determinations of compliance with the Court Orders. Accordingly, based on limited findings set forth in the 12/30 Report, the Special Master recommended that the Court defer any immediate action, provided:

...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, so the Special Master can evaluate the need for an evidentiary hearing in advance of the next quarterly compliance report...

(Id. at pg. 23 "Preliminary Conclusion and Recommendation"). Subsequent to this report, the Special Master, with input from all parties, continued to evaluate the documents and information received from the City pursuant to the Procedures Order.

### **Months Six to Nine**

During the months following the 12/30 Report, it became clear that there existed prevailing areas of disagreement between the parties regarding, *inter alia*, certain requirements of the Court Orders and the appropriate ways to monitor and

evaluate compliance with the same. These issues were discussed in the Special Master Quarterly Compliance Report dated April 12, 2017 [Doc. No. 341] (the "4/12 Report").

Despite the apparent disputes, the Special Master still believed that all issues could be resolved, particularly because the Court Orders all reflect and memorialize consent agreements reached by the parties with the approval of the Court. In other words, the parties have repeatedly reached agreements on the proper resolutions of disputes in this case dating back to 2010.

Importantly, it also appeared that the parties, and specifically the City, remained committed to: (i) complying with requirements under the Procedures Order; (ii) accommodating additional, more frequent, informal meetings among the parties to resolve issues; and (iii) taking additional steps set forth in the 4/12 Report. This demonstrated to the Special Master a continued commitment to taking steps necessary to establish a consensus of complete compliance with the Court Orders.

Based on, *inter alia*, the City's apparent commitments in this regard, the Special Master set forth a series of requirements aimed at resolving the disputes related to compliance, and recommended no further action by the Court. Notably,

most or all of the requirements imposed on the City in the 4/12 Report were discussed with and agreed upon by the City prior to submission of the 4/12 Report. The Special Master also articulated in the 4/12 Report his belief that additional meetings between the parties would help facilitate resolutions of discrete compliance issues, and recommended weekly meetings until all issues were resolved.

Indeed, the 4/12 Report identified critical concerns regarding compliance with several important requirements of the Court Orders that needed (and still need) to be resolved. (See e.g., 4/12 Report, Doc. No. 341, at ¶2 "Identification Requirement for APD<sup>3</sup> Officers...", ¶¶4/5 "Documentation of Warrantless Seizures and ID Checks...", and ¶7 "Timely Resolution of Citizen Complaints..."). For a summary of all outstanding compliance issues as of this 7/14 Report, please see the Compliance Reference Chart and Table of Contents at the beginning of this report.

### **Months Nine to Twelve**

In the three months since the 4/12 Report, it has become clear that there are fundamental disagreements between the parties regarding the requirements of the Court Orders and what documents and actions are appropriate to evaluate

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<sup>3</sup> As used in this report, "APD" refers to the Atlanta Police Department.



compliance with the Court Orders. The most pervasive issues and obstacles preventing a complete consensus of compliance are addressed by topic below.

Ultimately, this 7/14 Report sets forth the Special Master's recommendation to the Court based on all documents and information reviewed to date, including, without limitation, information covered in the 9/29 Report, the 12/30 Report, and the 4/12 Report (hereinafter, collectively, the "Past Compliance Reports"), but with particular emphasis on the three months elapsed since the 4/12 Report, provided, the Special Master will be further investigating, revisiting, and/or supplementing all findings in the next quarterly compliance report and those that follow.

### **III. 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, the Procedures Order, and the Past Compliance Reports; (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, as indicated herein, the Special Master will move to more formal briefings and hearings in conjunction with efforts to apply Eleventh Circuit compliance standards and finality. Notably, the Special Master continues to believe that cooperation and agreement between the parties remains the most efficient and reasonable path towards establishing a consensus of complete compliance with the Court Orders, as contemplated by the parties and the Court. However, if the parties are unable to reach agreement, this 7/14 Report sets forth the Special Master's limited findings to date and recommendation to the Court regarding the appropriate path ahead.

#### IV. COMPLIANCE FINDINGS

For purposes of this 7/14 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, the Procedures Order, and the 4/12 Report. Utilizing this approach, the Special Master aims to provide the most essential 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 7/14 Report, including any paraphrased language, is intended to (nor shall it) modify, alter, or amend any of the 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 relevant Court Orders, 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. (See e.g., 4/12 Report, Doc. No. 341, ¶1). In fact, 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" consistent with the City's obligations set forth at paragraph 4(A) of the Procedures Order. Id. The Special Master is not presently aware of any change in this status.

In the 4/12 Report, the Special Master clarified the City's responsibilities under the Procedures Order, articulating that all SOPs<sup>4</sup> should 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. Id.

The Special Master received verbal confirmation from the City in a June 21, 2017 status conference that all such documentation was provided by the City on or around June 1, 2017. The Special Master has not independently verified the extent or Constitutionality of all of the SOPs provided, and does not plan to undergo a

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<sup>4</sup> As used in this report, "SOP" refers to the APD's Standard Operating Procedures.

comprehensive review at this time, given the representations of the City and Plaintiffs' Counsel, to date, and the lack of any apparent controversy.

That said, 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]", and the requirements relative to APD SOPs are ongoing in nature. (See e.g., 2015 Order, Doc. No. 289, ¶ 8). Accordingly, the Special Master believes a finding of compliance eventually will be appropriate and forthcoming; however, the Special Master again defers any final finding out of necessity at this time. This issue will be revisited in conjunction with future reports.

In sum, provisions of the Procedures Order appear to be contributing to a consensus of compliance, and, therefore, the Special Master recommends the procedures set forth at paragraph 4(A) of the Procedures Order be extended for another year. The Special Master will file a motion to extend the relevant provisions of the Procedures Order, consistent with this report.

**2. IDENTIFICATION REQUIREMENT FOR APD OFFICERS [2011 Order at Ex. A, ¶ 2] AND RELATED ISSUES FROM 2015 ORDER [2015 Order at ¶¶ 4(a), 4(b)].**

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.

(hereinafter, the "Identification Requirement") (See e.g., 4/12 Report, Doc. No. 341, ¶2; see also 2011 Order, Doc. No. 280, "Exhibit A: Reforms of the Atlanta Police Department", ¶2).

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 Requirement as set forth in the Court Orders, including, but not limited to, the procedures set forth at paragraph 4(D) of the Procedures Order. Previously, there had been a lack of

clarity among the parties regarding how to establish compliance with the "shall require" element of the Identification Requirement. Notably, all parties agreed to the Procedures Order as a way to help establish verifiable compliance metrics.

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's Orders.

In the 4/12 Report, the Special Master articulated findings from a March 9, 2017 inspection of a daily roll-call uniform inspection and reported general satisfaction with the APD's handling of daily roll-call uniform inspections; however, the Special Master still had not witnessed one of the more robust, periodic uniform and nametag inspections required by paragraph 4(D)(ii) of the Procedures Order (hereinafter, a "Robust Nametag Inspection"). Again, the Robust Nametag Inspection was one in a series of procedures developed (and agreed to by the parties) as a way to create verifiable compliance metrics related to the Identification Requirement set forth at paragraph 2 of the 2011 Order, which the parties interpreted differently.

To address this and other gaps in compliance monitoring, the Special Master outlined in the 4/12 Report a series of additional requests or requirements, as follows:

- First, the Special Master requested a schedule of the more robust, periodic uniform and nametag inspections required by paragraph 4(D)(ii) of the Procedures Order (i.e., Robust Nametag Inspections), and noted that the City agreed to coordinate one or more such inspection(s) with the Special Master's schedule.
- Second, the Special Master requested (on a prospective basis) that the City provide to the Special Master and Plaintiffs' Counsel written records of or related to the paragraph 4(D)(ii) nametag inspections (i.e., Robust 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 tending to confirm (or not to confirm) compliance with the identification requirements.
- Third, the Special Master requested 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 requested an opportunity for 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.



(4/12 Report, Doc. No. 341, ¶2). The Special Master committed to continue monitoring compliance with the identification requirements for APD officers and to document his findings to Plaintiffs' Counsel, the City, and the Court. Id. Notably, the requirements set forth in the 4/12 Report generally track the requirements of the Procedures Order.

To date, despite considerable efforts, the Special Master has not observed a Robust Nametag Inspection and is unable to report meaningful compliance by the City with regard to the additional requirements set forth in the 4/12 Report, which the Special Master contemplated as reasonably necessary to fulfill his duties to the Court with regard to monitoring and enforcement of the Court Orders and related quarterly compliance reporting. As a result, the Special Master is unable to confirm compliance with the Court Orders, because the City has not established, at a minimum, its compliance with the relevant portions of the Procedures Order.

This is not to suggest that the City has *necessarily* failed to comply with paragraph 2 of the 2011 Court Order (i.e., the Identification Requirement); however, the City has failed to establish its compliance with the Procedures Order and to appropriately address the additional requests set forth in the 4/12 Report,

which were designed to assist with performance of the Special Master's duties, as set forth above.

In sum, due to the City's failure to establish compliance with the Procedures Order, which was developed to create verifiable compliance metrics related to the Identification Requirement, and due to the City's failure to appropriately respond to the 4/12 Report, the Special Master cannot find that the City is in compliance with the Court Orders. Further, the Special Master questions the City's level of commitment to establishing compliance with the Identification Requirement through steps previously agreed upon by the City.

As a result, the Special Master recommends that the Court enter a show cause order in the same or substantially similar form as the proposed order attached hereto as **Exhibit A** (the "Show Cause Order") without delay.

At a minimum, the Special Master recommends that the procedures set forth at paragraph 4(D) of the Procedures Order be extended for another year. The Special Master will file a motion to extend the relevant provisions of the Procedures Order, consistent with this report.

**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.

As stated in the 4/12 Report, Plaintiffs' Counsel previously expressed potential concern related to the City's compliance with this requirement, and the Special Master requested 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, to the extent appropriate. (4/12 Report, Doc. No. 341, pp. 12, ¶3). However, no further communications from Plaintiffs' Counsel were forthcoming on this particular topic. Therefore, unless or until additional information is brought to the Special Master's attention, the Special Master is operating under the assumption that the City has established some satisfactory level of compliance with this requirement, while remaining open to additional feedback and suggestions regarding appropriate ways to monitor compliance.

However, as this requirement is ongoing in nature, a finding of compliance is deferred out of necessity, pending review of additional evidence by the Special

Master, and the issue of compliance will be revisited, as necessary and appropriate, in conjunction with future 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].**

In the 4/12 Report, the Special Master identified critical concerns relative to the requirement to document warrantless seizures and ID checks, as follows:

- 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.

(4/12 Report, Doc. No. 341, ¶2).

Then, the Special Master set forth a series of remedial requirements aimed at addressing these critical concerns, in large part, based on the parties' mutually expressed desires to expedite a path towards a consensus of complete compliance, including, *inter alia*, the following: (i) approval and distribution of a "demographic form<sup>5</sup> flowchart" for reference by APD officers in the field as a compliance tool;

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<sup>5</sup> For purposes of this report, the requirement to document warrantless seizures and ID checks is sometimes referred to as the "demographic form" requirement, and any references to the term "demographic form" in this 7/14 Report refer to the

(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<sup>6</sup> 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 (hereinafter, collectively, the "Demographic Form Objectives"). Id. However, there had not been ample time to fully discuss and reach agreement on all matters relative to the Demographic Form Objectives and how to accomplish same prior to the filing of the 4/12 Report.

Accordingly, 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

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specific form utilized by the APD in efforts to comply with the requirement to document warrantless seizures and ID checks, as set forth in the Court Orders.

<sup>6</sup> "Calhoun Training" refers to the recurrent, mandatory training for sworn employees of the Atlanta Police Department described more particularly at paragraph 6 of Exhibit A to the 2010 Order and 2011 Order and at paragraphs 1, 2, and 3 of the 2015 Order. Compliance with the Calhoun Training requirements is evaluated separately at paragraph 6 of this 7/14 Report below.

compliance, in lieu of any sanctions, the Special Master required the following steps in furtherance of the Demographic Form Objectives:

(i) Major Schierbaum and his Training Academy team [were 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 [were asked] 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 [were 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 [was 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 [were asked] to 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 [was 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.

(hereinafter, collectively, the "Demographic Form Process") (4/12 Report, Doc. No. 341, ¶4/5). Notably, the 4/12 Report states explicitly that "[a]ny 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." Id. The Demographic Form Process was, in large part, discussed with and agreed upon by the City prior to the filing of the 4/12 Report.

To date, none of the Demographic Form Process and none of the Demographic Form Objectives have been accomplished as contemplated by the 4/12 Report.

The Special Master has attempted several times to schedule meetings contemplated by the Demographic Form Process; however, the City now appears

disinclined to engage in the Demographic Form Process and/or to accomplish the Demographic Form Objectives, and has asserted to the Special Master its belief that the requirement to document warrantless seizures and ID checks is either overly burdensome or unnecessary. On information and belief, the City may even seek relief from the requirement.

Notwithstanding, the requirements related to documentation of warrantless seizures and ID checks remain in full force and effect as a result of the Court Orders, the Procedures Order, and the 4/12 Report, none of which have been modified, amended, vacated, or superseded as of the filing of this report.

Furthermore, Plaintiffs' Counsel have presented credible evidence to the Special Master in *ex parte* discussions and in meetings with all parties and the Special Master suggesting that the City may, in fact, be out of compliance with the relevant requirements. Notably, some portion of Plaintiffs' presentation was *ex parte*, and therefore, the City has not waived any objections or rights to challenge such evidence, and all parties should be given a fair opportunity to present their complete cases related to same. However, it should be noted that the Special Master has concerns about the City's ability to establish compliance with the Court Orders at this time.



For these additional reasons, the Special Master recommends that the Court enter a show cause order in the same or substantially similar form as the proposed Show Cause Order attached hereto as **Exhibit A** without delay.

Upon resolution of all issues related to the requirement to document warrantless seizures and ID checks, including confirmation regarding appropriate documentation to monitor, evaluate, and report on compliance, the Special Master will file a motion to modify and extend the relevant provisions of the Procedures Order, as appropriate, in a continued effort to transition this compliance issue towards more routine monitoring and reporting.

**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, there have been disputes related to past compliance with the requirements of the Court Orders related to Calhoun Training. Nonetheless, the Special Master has been and remains inclined to find that the City has achieved substantial or technical compliance with 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, to be demonstrated by a Calhoun Training program acceptable in format and content to Plaintiffs and delivered to all

sworn APD employees within the time frames contemplated by the Court Orders, 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 related to Calhoun Training. Accordingly, compliance with the Calhoun Training requirements will be revisited in conjunction with future compliance reports.

**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 or 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<sup>7</sup> 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:

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<sup>7</sup> "OPS" refers to the Atlanta Police Department Office of Professional Standards, which is at least one mechanism by which citizens may submit complaints of police misconduct. More information about OPS is available online at <http://www.atlantapd.org/services/office-of-professional-standards>.

## 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.

(emphasis added) (hereinafter, the "180 Day Requirement") (See e.g., 4/12 Report, Doc. No. 341, ¶7; see also 2011 Order, Doc. No. 280, "Exhibit A: Reforms of the Atlanta Police Department", ¶7).

To be clear, there is disagreement regarding the meaning of “all citizen complaints of police misconduct of any kind” as contemplated by the 2010 Order and the 2011 Order. To paraphrase the issue, Plaintiffs opine that the language is intentionally broad and includes types of unspecified citizen complaints that are not necessarily investigated and adjudicated through the OPS system. In other words, Plaintiffs do not believe the OPS system effectively tracks or monitors compliance with the requirements of the Court Orders. On the other hand, the City opines that “citizen complaint” is a "term of art" and expressly refers to and contemplates the OPS system and process and nothing more. In short, there appears to be a fundamental disagreement regarding what constitutes a "citizen complaint" and, therefore, what is required by the Court Orders.

This fundamental disagreement regarding the meaning of the Court Orders boils down to two critical issues for purposes of this report. First, the interpretation of the Court Orders necessarily impacts 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 as contemplated by the Court Orders). Second, after the scope of substantive compliance is resolved, there are undoubtedly questions related to the documentation being provided to the Plaintiffs and the Special Master and its completeness and effectiveness to monitor and effectively evaluate compliance efforts.

To address the issue, the Special Master held an informal hearing on May 25, 2017 and articulated to the parties a procedure to resolve the dispute, as follows:

If a mutual resolution cannot be reached during these meetings, the Special Master will issue an informal assessment regarding how he believes the issue should be resolved based on the information presented. Going forward, if the parties agree with the Special Master's informal assessment, he will request that they stipulate and/or consent to any necessary amendments to the Procedures Order to memorialize the parties' agreement. If, however, either party disagrees with the Special Master's findings and wishes to stand firm, the Special Master will request that the dissenting party submit for his consideration an appropriate motion. He will then entertain a briefing and hold a formal evidentiary hearing, pursuant to a schedule to be determined, so that the Special Master can issue

a formal ruling consistent with the procedures set forth in the Special Master Order and Fed. R. Civ. P. 53.

(hereinafter, the "Dispute Resolution Procedure") (See Holly Hampton Email, 5/23/2017 at 11:49 AM).

Consistent with the Dispute Resolution Procedure and the parties' requests to provide guidance on this issue, attached hereto as **Exhibit B** is a proposed order addressing the scope of the 180 Day Requirement (hereinafter, the "Proposed 180 Day Order"), which sets forth the manner in which the Special Master believes the issue should be resolved based on the information and limited argument presented by the parties to date. As set forth more fully in the Dispute Resolution Procedure, if the parties do not oppose the Proposed 180 Day Order, the Special Master requests they consent to its entry.

If, however, any party disagrees with the Special Master's findings and wishes to stand on its objections, the Special Master hereby requests that the dissenting party file an appropriate motion within 35 days of the filing of this report. Upon receipt of a timely filed motion, the Special Master will entertain briefing, hold a formal evidentiary hearing pursuant to a schedule to be determined, and issue a formal ruling on any such motion, subject to appeal,

consistent with the procedures set forth in the Special Master Order and Fed. R. Civ. P. 53.

In the interim, due to probable implications of a ruling regarding the scope of the 180 Day Requirement on the scope of documents necessary to monitor compliance efforts, and in the interests of efficiency and economy, the Special Master has placed a temporary hold on his monitoring efforts related to City's OPS files, including, but not limited to, review of documents being produced pursuant to the 2015 Order and the procedures set forth at paragraph 4(B) of the Procedures Order. If the Court Orders contemplate more "citizen complaints" beyond those submitted or otherwise processed through OPS, any review of documents limited only to OPS compliance is incomplete, and the procedures relative to monitoring compliance must necessarily be reconsidered. Indeed, the City's compliance efforts may require substantial reform if it is determined that OPS is not the appropriate mechanism through which to establish compliance with the Court Orders.

In sum, for the reasons set forth in the Proposed 180 Day Order, the Special Master opines that the 180 Day Requirement contemplated by the Court Orders is broader in scope than the City's current compliance efforts. However, since there are potentially unresolved disputes related to the interpretation of the 180 Day

Requirement that have not been fully briefed and argued, a final finding of compliance is deferred out of necessity, and the issue of compliance will be revisited, as necessary and appropriate, in conjunction with future reports.

Upon resolution of the issues related to the 180 Day Requirement, including confirmation regarding appropriate documentation to monitor, evaluate, and report on compliance, the Special Master will file a motion to modify and extend the relevant provisions of the Procedures Order, as appropriate, in a continued effort to transition this compliance issue towards more routine monitoring and reporting.

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

The Special Master has not been made 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 deferred until the next quarterly compliance report.

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

The Special Master has not been made 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 deferred until the next quarterly compliance report.

**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.**

As set forth in the Past Compliance Reports, 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 has previously opined that the City was attempting in good faith to comply with the applicable Federal Rules of Civil Procedure, the Local Rules and Standing Orders of the Court, the Court Orders, and the Procedures Order.

However, the 4/12 Report expressly articulated that additional coordination and collaboration with APD representatives was necessary to identify the appropriate documentation needed to evaluate compliance, to streamline efforts related to monitoring, and to achieve a consensus of complete compliance with the Court Orders. (4/12 Report, Doc. No. 341, pp. 23, ¶8). Along these lines, and in



an effort to make the monitoring process more transparent and efficient for everyone involved, the Special Master requested meetings, with attendance required by at least one authorized counsel representative for each party and any necessary APD representatives. Id. In the 4/12 Report, the Special Master also articulated various documents that needed to be discussed, particularly with regard to the requirement to document warrantless seizures and ID checks, discussed in greater detail at paragraph 4/5 above. Id.

To date, none of the Demographic Form Process and none of the Demographic Form Objectives have been accomplished as contemplated by the 4/12 Report.

Notably, the Special Master has attempted several times to schedule meetings contemplated by the Demographic Form Process; however, the City appears disinclined to engage in the Demographic Form Process and/or to accomplish the Demographic Form Objectives, and has asserted to the Special Master its belief that the requirement to document warrantless seizures and ID checks is overly burdensome. On information and belief, the City may even seek relief from the requirement.

Notwithstanding, the requirements relative to post-judgment discovery and compliance monitoring remain in full force and effect as a result of the Court Orders, the Special Master Order, the Procedures Order, and the 4/12 Report, none of which have been modified, amended, vacated, or superseded as of the filing of this report.

For these additional reasons, the Special Master recommends that the Court enter a show cause order in the same or substantially similar form as the proposed Show Cause Order attached hereto as **Exhibit A** without delay.

Upon resolution of the issues discussed in this report, including confirmation regarding appropriate documentation to monitor, evaluate, and report on compliance, the Special Master will file a motion to modify and extend the relevant provisions of the Procedures Order, as appropriate, in a continued effort to transition this compliance issue towards more routine monitoring and reporting.

**B. Paragraph 12 of the 2015 Order.**

As stated in the Past Compliance Reports, the Special Master has reviewed the record related to paragraph 12 of the 2015 Order and has previously found that the City has been generally complying with the requirements of the 2015 Order relative to the payment of Plaintiffs' counsels' fees; however, since the 4/12 Report,

it has become clear that disputes exist as to whether Plaintiffs' counsel are entitled to reimbursement under 42 U.S.C. § 1988 and the Court's Orders of certain attorneys' fees related to Plaintiffs' defense of that certain Petition for Emergency Relief from Chief Judge of the Federal District Court for the Northern District of Georgia [Case No. 17-mi-00004-RWS, Doc. No. 1; Case No. 17-cv-00530-RWS, Doc. No. 1] (the "Petition for Emergency Relief") filed by the City. Notably, the Special Master has not been made aware of any other disputes regarding any other attorneys' fees at this time.

With regard to the disputed fees, the Special Master articulated to the parties the Dispute Resolution Procedure and held an informal hearing on May 26, 2017. Consistent with the Dispute Resolution Procedure and the parties' requests to provide guidance on this issue, attached hereto as **Exhibit C** is a proposed order addressing Plaintiffs' entitlement to attorneys' fees relative to Plaintiffs' defense of the Petition for Emergency Relief (hereinafter, the "Proposed Fee Dispute Order"), which sets forth the manner in which the Special Master presently believes the issue should be resolved based on the information and limited argument presented at by the parties to date.

As set forth more fully in the Dispute Resolution Procedure, if the parties agree with the Special Master's informal assessment in the Proposed Fee Dispute Order, the Special Master requests they consent to its entry. If, however, any party disagrees with the Special Master's findings and wishes to stand on its objections, the Special Master hereby requests that the dissenting party file an appropriate motion within 35 days of the filing of this report. Upon receipt of a timely filed motion, the Special Master will entertain briefing, hold a formal evidentiary hearing pursuant to a schedule to be determined, and issue a formal ruling on any such motion, subject to appeal, consistent with the procedures set forth in the Special Master Order and Fed. R. Civ. P. 53.

Since the Special Master has not been made aware of any other disputes between the parties relative to the requirements set forth at paragraph 12 of the 2015 Order, except as expressly set forth above and in the Proposed Fee Dispute Order, the Special Master otherwise believes and finds that the City is compliant. However, due to the ongoing nature of the paragraph 12 requirements, a final finding is deferred out of necessity, and this issue will be revisited, as necessary and appropriate, in conjunction with future reports.

**C. Paragraph 13 of the 2015 Order.**

The Special Master has reviewed the record related to paragraph 13 of the 2015 Order and finds that the City has established compliance.

**D. 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 deferred out of necessity, and this issue will be revisited, as necessary and appropriate, in conjunction with future reports.

## **V. PRELIMINARY CONCLUSION AND RECOMMENDATION**

As set forth herein, the Special Master has concerns about the City's interpretation, understanding, and compliance efforts with regard to certain requirements of the Court Orders, the Special Master Order, the Procedures Order, and the 4/12 Report. It should be noted that significant progress has been made by the parties with respect to several requirements of the Court Orders, and in some instances, there are no apparent compliance issues. However, with respect to the concerns and requirements discussed in this report, the Special Master believes there is significant and critical work to be done in order to establish a consensus of compliance with the Court's Orders and transition to more routine compliance monitoring.

As stated previously, the Special Master believes that the most expeditious and economical path to a consensus of complete compliance is through effective communications between the parties and the Special Master. Indeed, the Court Orders, the Special Master Order, and the Procedures Order are all decrees entered with the consent of the parties. However, the City appears disinclined to discuss and/or collaborate with Plaintiffs' Counsel regarding outstanding monitoring and compliance issues, which has contributed, in part, to the lack of consensus

regarding compliance. If the parties cannot agree on a reasonable resolution of monitoring and compliance issues related to the previously agreed upon Court Orders, the Special Master is concerned that this matter will move away from the collaborative environment contemplated by the parties in the Special Master Order and evolve into expensive, contentious, and potentially counter-productive litigation.

The Special Master's ultimate goal is for the parties to transition this matter to a posture of routine compliance monitoring and reporting, consistent with the process contemplated by the Procedures Order and the Special Master Order. However, this goal cannot be realized until there is a mutual understanding of the requirements of the Court Orders and a mutual willingness to work together to accomplish a consensus of complete compliance. For the first three to six months of the Special Master's appointment, it appeared the parties were committed to working towards this mutual goal of routine compliance monitoring. However, the Special Master now has reservations regarding the City's commitment to the consent orders to which it previously agreed.

There is no doubt that the Procedures Order will require modification in order to accomplish the mutual goals of the parties and the Special Master in terms

of routine compliance monitoring. Indeed, it has already been established that certain documents contemplated by the Procedures Order are not sufficient or appropriate to monitor compliance with the Court Orders. However, the City has not taken the steps necessary to establish what modifications to the compliance monitoring procedures are appropriate. To be clear, the Special Master needs the City's cooperation in establishing the procedures, documents, and other resources available to assist the Special Master in fulfilling his duties to the Court, and the Special Master Order requires the City to provide "access to any and all documents, Atlanta Police Department staff, and any other information as he or she deems necessary to provide the Court with [ ] quarterly compliance reports." The Special Master is concerned that he is not presently receiving the City's complete cooperation in this regard.

Accordingly, for all of the reasons set forth in this 7/14 Report, the Special Master is additionally recommending that the Court enter the proposed order attached hereto as **Exhibit D** without delay.

## **VI. RECOMMENDATION AND PLEA**

Accordingly, and for the reasons set forth in this 7/14 Report, the Special Master's complete recommendation and plea to the Court is as follows:



(1) that the Court enter the Show Cause Order attached hereto as **Exhibit A** without delay;

(2) that the Court adopt the Special Master's proposed Dispute Resolution Procedure related to the Proposed 180 Day Order and the Proposed Fee Dispute Order attached hereto as **Exhibit B** and **Exhibit C**, respectively, including, specifically, the following:

(a) that, upon receipt of an unopposed motion submitted by the Special Master and signed by the parties indicating no opposition to the Proposed 180 Day Order or the Proposed Fee Dispute Order, the Court immediately enter such order;

(b) that, to the extent no motion is filed within 35 days of submission of this report and upon notification from the Special Master regarding same, the Court enter the Proposed 180 Day Order and the Proposed Fee Dispute Order in the form or substantially similar form as attached hereto as **Exhibit B** and **Exhibit C**, respectively;

(c) that, to the extent any party timely files a motion seeking relief different than what is set forth in the Proposed 180 Day Order and the Proposed Fee Dispute Order attached hereto as **Exhibit B** and **Exhibit C**,

respectively, the Court adopt the Special Master's proposed procedure to entertain briefing and hold a formal evidentiary hearing, pursuant to a schedule to be determined, so that the Special Master can issue a formal ruling on any such motion, subject to appeal, consistent with the procedures set forth in the Special Master Order and Fed. R. Civ. P. 53;

(3) that the Court enter the proposed order attached hereto as **Exhibit D**, whereby without delay; and

(4) that the Court grant such other appropriate relief as it deems just and proper.

Respectfully submitted by:

/s Joe D. Whitley

**JOE D. WHITLEY**

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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 JULY 14, 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 19th day of July, 2017.

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

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*Special Master*