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**TESTIMONY BY TOM STEENSON REGARDING THE PROPOSED SETTLEMENT
AGREEMENT BETWEEN THE DOJ AND THE CITY OF PORTLAND**

I write with regard to the proposed Settlement Agreement between the DOJ and City of Portland which for the following reasons I do not believe is fair, adequate, or reasonable and should not be approved in its current form. I also join in any testimony opposing approval or asking for changes in the proposed Settlement Agreement which may be offered by the AMA, ACLU, NAMI, Portland Copwatch, the Lawyers Guild, and other such organizations and their representatives.

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I. My Background

I have extensive experience litigating in the District of Oregon on behalf of victims and their families against members of the Portland Police Bureau ("PPB") and the City of Portland over issues of police misconduct, especially the repeated use of excessive force resulting in the needless injury and sometimes death of innocent citizens. Many of those citizens have either been suffering from mental illness or were in an emotional or behavioral crisis. *See, e.g.:* *Campbell v. City of Portland, et al.*, No. 10-1358-MO (D Or 2010) ; *Chasse v. City of Portland, et al.*, No. 07-0189-KI (D Or 2007); and *Gwerder v. Besner*, No. 07-335-HA (D Or 2007).

Although not law enforcement trained, I believe I have acquired, through my litigation experience and study of best practices for the police to follow, a certain level of expertise regarding the use of force and other issues related to the constitutional operation of a modern day police department. I trust this will assist the court in understanding the perspective I have on the proposed agreement.

II. The Crucial Need for Changes in the PPB Regarding Its Operation

A. DOJ’S Official Findings and Concerns Regarding the Operation of the PPB

In its Findings re: Investigation of the Portland Police Bureau (“Findings”), dated September 12, 2012, the DOJ found “reasonable cause to believe the PPB engages in a pattern or practice of unnecessary or unreasonable force during interactions with people who have or are

perceived to have mental illness.” At page 1. More specifically, the DOJ found that the “pattern or practice is manifested in the following ways:

(1) Encounters between PPB officers and persons with mental illness too frequently result in a use of force when force is unnecessary or in the use of a higher level of force than necessary or appropriate, up to and including deadly force. We found instances that support a pattern of dangerous uses of force against persons who posed little or no threat and who could not, as a result of their mental illness, comply with officers’ commands. We also found that PPB employs practices that escalate the use of force where there were clear earlier junctures when the force could have been avoided or minimized. As described in greater detail below, examples of this use of excessive force include a December 2010 incident when multiple officers resorted to repeated closed-fist punches and repeated shocking of a subject who was to be placed on a mental health hold.

(2) In particular, we found that PPB officers use electronic control weapons (“ECWs” (commonly referred to as “Tasers”)) in circumstances when ECW use is not justified or use ECWs multiple times when only a single use is justified in encounters with people with actual or perceived mental illness. We found instances that support a pattern of officers using multiple cycles of shock without waiting between cycles to allow the suspect to comply, or officers failing to utilize control tactics during ECW cycles to properly affect handcuffing without having to resort to repeated ECW shocks. Examples detailed below include an August 2010 incident when an officer repeatedly shocked an unarmed, naked subject who, as it turned out, was experiencing a diabetic emergency.

(3) In effectuating an arrest, officers are permitted to use only the level of force reasonably necessary to accomplish a legitimate government objective; however, we found that PPB officers use more force than necessary in effectuating arrests for low level offenses involving people who are or appear to be in mental health crisis. As detailed below, this includes, for instance, a May 2011 incident in which an officer punched an unarmed subject at least seven times in the face when responding to a call to check on the man’s well-being.” Findings, at pages 2-3.

The DOJ concluded “that this pattern or practice results from deficiencies in policy, training, and supervision” which its proposed Settlement Agreement with the City purports to adequately address. In addition, although not making formal findings, the DOJ’s “examination identified concerns [such as]the failure to provide adequate and timely access to medical care.”

Id. at page 3.

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B. Other Relevant Evidence and Concerns Regarding the Operation of the PPB

The DOJ's official findings and concerns were not surprising given what I have learned in over 30 years of litigation against Portland police officers and the City of Portland. In my opinion, the direct causes of the pattern or practice of unnecessary and unreasonable force being used by Portland police officers include the following.

(1) The PPB/City's Failure to Discipline Contributes to a Culture within the PPB which Fosters the Use of Excessive Force.

The DOJ found that the PPB's supervision of its officers contributes to a pattern or practice of the use of excessive force. Although not specifically addressed by the DOJ, discipline is an integral part of every effective system of employee management, the absence of which contributes to employees knowing they can with impunity violate workplace rules and, relevant to the instant case, the City's policies and the constitution.

In the last 35 years, not a single Portland police officer has been disciplined for intentional, unnecessary and unreasonable use of force, often the discharge of a firearm, which has caused the death of a citizen. This is true despite (a) the repeated instances of community outrage over many of those deaths, (b) the concern expressed by City leaders and sometimes the current police chief over some of those tragedies, and (c) numerous lawsuits filed against Portland police officers and the City resulting in substantial damages being paid to the families of victims. Examples involving cases which I have handled include:

a. The *Campbell* case involved the 2010 death of Aaron Campbell, a young African American who was in an emotional crisis over the death of his brother. After being asked to come out of an apartment by Portland police officers, Campbell followed commands and walked backwards towards Portland police officers who were assembled in the apartment building's parking lot. Even though he stopped, was standing motionless with his back to the officers, was

unarmed, and presented no threat, a Portland police officer shot him in the back with a beanbag shotgun. Probably fearing for his life and in pain, Campbell then ran towards his apartment for safety. As he ran away, still unarmed and threatening nobody, he was shot in the back by another officer with an AR-15 killing him almost immediately. The PPB and the City did not discipline either of the two officers for their unnecessary and unreasonable use of force, although the City did engage in a failed attempt to terminate the officer who fired his AR-15.¹

b. The *Chasse* case involved the 2006 death of James Chasse, who was living with mental illness and simply on a walk in his neighborhood when confronted by the police. According to approximately 15 eyewitnesses, James Chasse was doing nothing but standing on a sidewalk. When startled by the presence of police, he walked or ran away. He was tackled and taken down hard to the pavement by a Portland police officer, and then beaten by that officer, a Portland police sergeant, and a Multnomah County deputy. As a result of being tackled and repeatedly struck by the officers, Chasse suffered at least 26 different fractures to over 18 different rib bones, both posterior and anterior, and a punctured lung. The police also prevented Chasse from receiving timely and adequate medical treatment during the hour or so he lived after being beaten and then arrested. The PPB and the City did not discipline the two PPB members for their brutal use of force.²

c. The *Gwerder* case involved the 2005 death of Raymond Gwerder, a very intoxicated, despondent man, who walking back into his unoccupied apartment when he was shot in the back

¹ The City paid \$1,200,000 to settle the case. Subsequently, the officer's very powerful union, the intervenor herein, was able to overturn his termination by taking it to arbitration. Despite the police chief and his management team's conclusion that the officer had violated PPB policy, the union's position was that the officer did what he was trained to do. No doubt protecting one of their own, that testimony was elicited from training officers and sergeants who all belonged to the *same* union as the officer who shot and killed Campbell.

² The City paid \$1,600,000 to settle its part of the case.

without warning by a Portland police officer. The PPB and the City did not discipline the PPB officer about his unnecessary and unreasonable use of deadly force.³

Not only are officers not disciplined when they take the life of an innocent citizen without justification, they know that any damages paid in a settlement or as a result of a trial, and their costs of defense including attorney fees, will be borne by the City of Portland and their insurance carrier under the Oregon Tort Claims Act. In my opinion, this failure to discipline or in any way hold officers responsible for their use of excessive force has contributed to a culture within the PPB in which officers know they can take the life of an innocent citizen with impunity. Unfortunately, the proposed Settlement Agreement does little or nothing in my opinion to address the serious shortcomings in the PPB/City's ability and/or desire to discipline such officers.

(2) PPB's Unclear, Non-specific and Inadequate Use of Force and Medical Treatment Policies

The PPB does not have clear, specific and adequate use of force and medical treatment policies. Because of these shortcomings, the City's own consultants have repeatedly criticized the PPB's policies (*see* DOJ Findings, Section III.B., pages 5-6), and there has been repeated litigation over the use of excessive force and the denial of timely and adequate medical treatment (*see* DOJ Findings, Section III.B., page 5; and *Campbell, Chasse and Gwerder*, discussed above).

III. The Settlement Agreement Needs to Be More Specific and Mandate that the PPB Have a More Specific and Adequate Use of Force Policies.

As several law enforcement trained experts have told me over the years, "if it isn't in writing, then it doesn't exist." In other words, if a police department wants to ensure that its

³ The City paid \$500,000 to settle the case.

officers act appropriately, the department's expectations should be spelled out in its policies, otherwise officers will not believe they have to do anything different than the policies state. It is for this basic reason that the failure of the proposed Settlement Agreement to require more specificity in the PPB's use of force, as well as its emergency medical treatment, policies.⁴

A. A Use of Force Continuum

Many modern day police departments have policies in place which contain an explicit use of force continuum to limit the permissible uses of force by officers on a person based upon the person's behavior so that the force used is reasonable and necessary under the circumstances. Such continuums set forth different behaviors by people which officers may encounter, such as not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant. Such continuums then provide corresponding limitations on the maximum force which can be used given the behavior by the particular person being encountered. Such continuums are helpful to officers because they contain clarity as to the limitations on the amount of force they are permitted to use in different situations. This also helps to protect citizens from having excessive force used against them under a *Graham* analysis. An example of such a policy can be found in the Chicago Police Department General Orders. See attached General Order G03-02-01 -- "The Use of Force Model" (Attachment A) and General Order G03-2-02 -- "Force Options" (Attachment B).

An example of such a policy, which I have drafted using a variety of sources, is as follows:

- i. In the force continuum, it is the suspect's level of resistance that determines the officer's response and delineates suspects into one of four categories:

⁴ I and others in the community as well are very concerned about how easy it will be for the City to argue "substantial compliance" with the final Settlement Agreement if the Agreement is not clearer and more specific in terms of what the PPB is required to do in terms of revised policies.

not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant.

- ii. “Not resistant”: suspects who do not resist but follow all commands are compliant. Only a law enforcement officer’s presence and verbal commands are required when dealing with these individuals; no coercive physical contact is necessary.
- iii. “Passively resistant”: A passively resistant suspect fails to follow commands, may be verbally abusive, may attempt to move away from the officer, may escape from the officer’s grip or may flee from the officer.
- iv. The suspect’s actions are neutral or defensive, so the officer does not feel threatened by his actions. If not a criminal matter, many times people are released after physical resistance because they have been defused by the officer and there is no longer a need to keep them in custody or restraints such as handcuffs. The subject maybe said to have “resisted” but not aggressively or violently.
- v. “Aggressively resistant”: An aggressively resistant suspect takes offensive action by attempting to push, throw, strike, tackle, or physically harm the officer or another person. To defend himself, the officer may respond with appropriate force to stop the attack. The officer feels threatened by the suspect's actions. Justified responses include the use of personal weapons (hands, fists, knees, elbows or feet, impact weapons such as ASP batons, and pepper spray). A bean bag shotgun or a Taser may not be discharged unless, in addition to being aggressively resistant, the suspect, by his/her words or conduct, gives an officer the reasonable belief that the suspect poses a credible and immediate threat (coupled with the means and ability to carry out the threat) of serious physical injury to the suspect himself/herself, the officer, or another person.
- vi. “Deadly resistant”: A deadly resistant suspect will seriously injure or kill the officer or another person if immediate action is not taken to stop the threat. The threat must be actual and immediate and not merely a potential threat or a threat that is possible sometime in the future. If such an actual and immediate threat exists, the officer is justified in using force, including deadly force, reasonably necessary to overcome the suspect and affect custody.

The PPB’s Use of Force policy was revised effective December 13, 2013, a year or so after the proposed Settlement Agreement was signed by the DOJ and the City of Portland.

Basically, it purports to follow a *Graham v. Connor* totality of the circumstances approach in setting forth permissible uses of force. Prior to that, and as relied upon by Portland Police Chief

Reese, his management team, and former Mayor Sam Adams in their failed attempt to terminate the officer who shot and killed Campbell, a use of force continuum analysis was used along with a Graham analysis to determine that the officer's use of force was unnecessary and unreasonable. More specifically, the PPB's previous use of force policy required officers to comply with the use of force continuum as well as the *Graham* standard. From its recently revised Use of Force policy, it is clear that the PPB does not interpret the proposed Settlement Agreement as requiring a use of force continuum, nor is it likely that the DOJ considers it to be a requirement since it is not specifically required by the agreement (*see* Section III, Use of Force, pages 16-20).

The only reference in the proposed Settlement Agreement to particular behaviors is in paragraph 46, p 11, with a definition of "Passive resistant." Although the definition may be accurate, it is too narrow and not explanatory enough and, although important, is only a small part of a use of force continuum. The implementation of a clear level of force continuum for the PPB should be adopted, including broader, much clearer definition of what it means to be "Passively resistant."

An example of why such a use of force continuum in a policy format is so important, arose related in the litigation over the death of Aaron Campbell and the failed attempt by the City to terminate the officer who shot Campbell in the back. The issue was whether Campbell was being "passively resistant" or more resistant. The officers on the scene, as well as their PPB trainers, claimed that Campbell was being physically or aggressively resistant when he did not follow commands and/or attempted to run away. As the above definition for "Passively resistant" makes clear, Campbell's reaction to the commands he received ("shoot me") and running away after being shot with the beanbag shotgun were never anything more than passive resistance. Thus, he should not have been shot with either the bean bag shotgun or, obviously, the AR-15. The various types of resistance (or non-resistance) by an individual needs to be spelled out in the

PPB policies so there is no doubt what the policies provide is the upper limit on the amount of force, if any,⁵ which is allowed in response to particular conduct by the individual.⁶

B. More Specific De-escalation Tactics and a More Inclusive List of Behaviors Which Must Be Considered (Including Mental Illness, Emotional/Behavioral Crisis, and Others) Should Be Mandated.

As an example of a policy which much more adequately than the PPB policy addresses the use of de-escalation tactics to reduce the need for force, as well as much more comprehensively addressing the treatment of those suffering from mental illness and/or in an emotional/behavioral crisis, is contained in the attached Seattle Police Department Manual 8.100 - “Using Force” (Attachment C). Part 3 of Seattle’s “Using Force” section provides:

“3. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

When time and circumstances reasonably permit, officers shall consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability

⁵ Had there been a use of force policy in place that clearly stated that an officer had to follow the use of force continuum *and* also only use force that is reasonable under the Graham analysis, the officer who shot and killed Campbell would presumably have been taught accordingly and, either Campbell would not have been shot, or the officer would have been terminated if he shot nonetheless.

⁶ Anecdotally, I have heard that some municipalities abandon using a use of force continuum, even though it provides a good model for determining what level of force is permissible, out of fear that it makes their officers and the department more vulnerable to legal claims. Such reasoning, even if valid, obviously flies in the face of what should be one of the paramount concerns of all use of force policies, *i.e.*, the protection of the constitutional rights of all citizens.

- Physical limitation
- Language barrier
- Drug interaction
- Behavioral crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

Other examples include:

- Placing barriers between an uncooperative subject and an officer
- Containing a threat
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using
 - Distance
 - Cover
 - Concealment
- Communication from a safe position intended to gain the subject's compliance, using:
 - Verbal persuasion
 - Advisements
 - Warnings
- Avoidance of physical confrontation, unless immediately necessary (for example, to protect someone, or stop dangerous behavior)
- Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making
- Calling extra resources to assist or officers to assist:
 - More officers
 - CIT-trained officers

- Officers equipped with less-lethal tools
- Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject

By comparison, the PPB's use of force policy does not explicitly address and direct officers to follow de-escalation tactics such as those laid out in the Seattle use of force policy. *See* PPB Directive 1010.00, Use of Force, Paragraphs 4.9 and 5.1.2 (referring to de-escalation without any specific tactics being required or even to be considered) and 5.1.2. Similarly, the PPB's policy is not as inclusive as it needs to be to protect the constitutional rights of those suffering from mental illness or those in an emotional or behavioral crisis. *See* PPB Directive Paragraphs 5.1.3 and 5.1.4 (referring only to "a person who has, or is perceived to have, mental illness" to the exclusion of those who are or appear to be have a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug interaction or behavioral or emotional crisis). Since the proposed Settlement Agreement does not require the level of clarity and direction necessary to protect against the unconstitutional use of force when people are exhibiting such behavior, it is safe to say that the PPB/City will not feel compelled to change its policy in these regards to do so.

C. The Use of the Beanbag Shotgun Should Be Restricted.

Currently, PPB members use the beanbag shotgun inappropriately to gain compliance with their orders, even though the individual is only passively resistant. Bean bag rounds are very painful and can result in broken bones, especially when used at point blank range. The Settlement Agreement should require the City to implement a policy restricting the use of beanbag shotguns as follows:

"If used at all, a less lethal 'beanbag' shogun should not be used for compliance, and not used from less than 10 feet."

Since the PPB's policy on the use of beanbag shotguns (PPB Directive 1050.00 Less Lethal Weapons and Munitions) does not prohibit its use to those who are merely non-compliant with an offices order or passively resistant, the final Settlement Agreement must require that policy.

D. The Carotid Hold Should Be Prohibited.

Paragraph 38, page 10, of the proposed Settlement Agreement contains a definition of "Lethal force" including a reference to the use of a "carotid neck hold." Since the PPB and the City claimed in the late 1980s to have banned the use of the carotid hold following the use of the hold by an officer causing the death of Lloyd Stevenson in 1985, there is no constitutional imperative for the final Settlement Agreement to now give its blessing to the use of such force. That reference should be removed from the final Settlement Agreement.

E. The Use of Impact Strikes to Sensitive Areas of the Body Should Be Restricted.

Impact strikes to the head, neck or throat, as well as other areas such as the chest (heart area) and groin using either an impact weapon, such as a baton, flashlight, pack set, etc., or personal weapons such as an officer's hand, fist, elbow, knee or can create a substantial risk of death or serious physical injury. Currently, the PPB has no policy limiting the use of impact weapons other than a general reference to using reasonable force when a baton is used. *See* PPB Directive 1030.00 Baton Use. To impose the necessary constitutional limitation on a Portland police officer's use of impact weapons and personal weapons, the final Settlement Agreement should require a PPB policy as follows:

“The use of impact weapons (such as batons, flashlights, and pack sets) and personal weapons (such as hands, fists, elbows, knees, or feet) to strike a suspect in the head, neck, chest or groin is prohibited unless the use of deadly force is authorized by PPB Directive 1010.00 Use of Force.”

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IV. The Final Settlement Agreement Needs to Be More Specific and Mandate that the PPB Have More Specific and Adequate Emergency Medical Treatment Policies.

The lack of timely emergency medical treatment for individuals who have force used against them by PPB officers or who appear injured, in pain or are exhibiting symptoms of injury is a recurring problem identified by the DOJ in its findings. The City has also hired different consultants over the last decade who have also identified the problem. Tragically, I also know from a review of several cases involving death from the use of force by PPB officers that a lack of timely or adequate medical treatment has too often contributed to the person's death. This is particularly true for those who suffer from mental illness or who are in the throes of a behavioral or emotional crisis. *See, e.g., Chasse* case, where the Portland police officers repeatedly failed to disclose their brutal use of force to medical personnel, covered up their brutal use of force, and refused to let the paramedics at the scene of the transport Chasse to a hospital, even though the officers suspected that Chasse was mentally ill.

The current PPB emergency medical treatment policy is woefully inadequate and the proposed Settlement Agreement does not require any changes. *See* PPB Directive 1010.00 Use of Force, Paragraph 11 Post Use of Force Medical Attention.

To address the current inadequacies, the following additional policy should be required by the final Settlement Agreement as follows:

- a. Any person who loses consciousness or shows other signs of health emergency while in custody must immediately be transported to the nearest emergency room via ambulance transport.
- b. In case of injury of any suspect, all officers must remain on the scene and at least one officer must administer first aid/CPR as soon as possible and remain with the injured person or persons until paramedics arrive. Officers must not hamper or delay prompt medical attention from being administered.
- c. Whenever an injury occurs, or there are signs of an injury such as loss or change of consciousness, apparent unconsciousness, abnormal or troubled

breathing, changes in skin or lip color, irregular pulse rate or heart beat, bleeding, pain, or other evidence or symptom of a potential health emergency, or whenever a subject complains of an injury, an officer must fully inform EMS and a supervisory PPB officer not involved with the use of force must be informed with as much specific information as possible about (1) the nature of any use of force on the subject, including the type of force, where the force was used on the subject's body, and the amount of force used by the officer(s) on the subject; (2) whether the subject was taken or fell to the ground or struck any objects during the encounter and, if so, what part(s) of the subject's body struck the ground or object; (3) all symptoms and other evidence of injury to the subject such as apparent loss of consciousness, breathing problems, irregular pulse rate or heart beat, bleeding, pain or other symptom or indication of a health emergency; (4) all of the subject's complaints, if any; and (5) whether the subject appears to be under the influence of drugs or alcohol, or is exhibiting symptoms or appears to have a mental illness, or appears to be suffering a behavioral or emotional crisis."

V. Training

The purpose of the PPB's training program is to teach officers what they need to know to properly do their job and so they know the constitutional limits of their authority. Unfortunately, in my experience, over the years the PPB Training Division too often has been part of the problem as opposed to being part of the solution in preventing the unnecessary use of force. For example, trainers have told me that they don't tell members during scenario based training that the officer made a decision to use too much force. Instead, they emphasize an officer's ability to explain why s/he made the decision to use that level of force, thereby, I believe, instilling the principle that if you just "claim" you had a good reason to use force and can explain yourself it does not matter whether too much force is used. This "culture" of using force without regard to consequences so long as you can explain your way out of it has to stop.

Also, I have discovered disconnects between what the trainers are training and what the PPB policies on their face seem to dictate. That occurred related to Aaron Campbell's death and the City's now infamous inability to terminate Officer Frashour for violating PPB force policies because he and his PPB trainers claim he was following what the trainers taught him to do. This

too has to stop -- the training must follow the policies rather than teaching uses of force which are policy violations. This disconnect also highlights the reason for why the PPB's use of force policies, as current written and presumably now endorsed by the DOJ, are not adequate when it comes to protecting citizens from the unconstitutional use of force.

I have serious doubts whether anything in the proposed Settlement Agreement will alleviate these types of problems with the PPB's training for its officers.

VI. A Monitor that Reports Directly to the Court Should Replace the Use of the Proposed COCL.

Monitors are routinely used to ensure the full implementation and enforcement of settlement agreements arising from cases brought by the DOJ against local police departments which have been found by the DOL to be engaging in a pattern or practice of unconstitutional treatment of their citizens. *See, e.g., United States v. City of New Orleans*, No. 12-1294 (ED La Dist), Order and Reasons, dated January 11, 2013 (Attachment D).

“As the Court emphasized at the hearing on the motions to intervene, in the Court's order denying intervention, and at the Fairness Hearing, the Court has given the evidence presented at the Fairness Hearing, as well as the comments from the public and the Proposed Intervenors, serious consideration when determining whether the proposed Consent Decree is fair, adequate and reasonable. The parties have represented to the Court that the concerns expressed will be given due consideration as policies and procedures are developed. Moreover, as the proposed Consent Decree is implemented, the continued involvement of the Court and the Consent Decree Court Monitor (“Monitor”) will ensure that this is the case. Given that the Court must approve the City's contract with the Monitor, and the Monitor will report to the Court, *the Monitor will be a crucial, independent entity aiding the Court in supervising the proposed Consent Decree's implementation.*” At page 8 (emphasis added).

See also *United States v. City of Seattle*, No. 2:12-cv-01282-JLR (WD Wash), Stipulation and Order for modification and for Entry of Preliminary Approval of the Parties' Settlement Agreement and Stipulated Order of Resolution, dated September 21, 2012 (Attachment E).

The proposal to use a Compliance Officer/Community Liaison (“COCL”) should be rejected because it does not provide the necessary independence from the parties, particularly the City who is to have sole authority to select the COCL and who will be paying the COCL’s salary. In addition, the COCL will not report to the Court directly. In order to ensure that the final Settlement Agreement will be fully implemented and enforced, there should be an independent Monitor that reports directly to the Court as its agent.

VII. If a COCL Is to Be Used, the Sole Authority to Select that Person Should Not Be Given to the City.

Other than allowing for a “30-day public comment period,” the sole authority for selecting the COCL is given to the Portland City Council in the proposed Settlement Agreement. The City is also to pay the salary of the COCL. Quite frankly, it reminds me of letting the fox run the hen house if the City is allowed to hand pick the COCL. At the very least, if the Court is going to allow a COCL instead of an independent Monitor to oversee the implementation and enforcement of the final Settlement Agreement, the Court should be involved in selecting the COCL.

VIII. Other Comments

I support the comments and criticisms which I know that the Albina Ministerial Alliance, Portland Copwatch, The League of Women Voters of Portland, the ACLU, the National Lawyers Guild, and other organizations and their representatives will be providing with regard to the inadequacies of the proposed Settlement Agreement.

In sum, the proposed USDOJ/City of Portland Settlement Agreement is flawed in many respects and is not fair, adequate or reasonable for many reasons only a few of which I have

touched on specifically above.⁷ I urge the Court to reject the proposed Settlement Agreement and only approve a revised Settlement Agreement which will be fair, adequate and reasonable taking into account the community's need for a final Settlement Agreement which, when implemented and enforced, will better ensure that the PPB and the City no longer encourage or acquiesce in a pattern or practice of excessive force.

⁷ In one form or another, the City and/or the DOJ has, I believe, in the last two years rejected without response all or most of my suggested changes to the proposed Settlement Agreement and/or the PPB policies discussed above.