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October 5, 2021

Hon. Magistrate Judge Staci Beckerman
Mark O. Hatfield U.S. Courthouse
1000 S.W. Third Ave.
Portland, OR 97204

RE: Amicus Mental Health Alliance's Confidential Settlement Memorandum for October 6, 2021
United States v. City of Portland, USDC Case No. 3:12-CV-02265-SI

Dear Hon. Magistrate Judge Beckerman,

Thank you again for assisting the parties in this matter. Undoubtedly this is a complicated, multi-lateral negotiation—on top of being an urgent one. As one of the *amici* in this case, we do understand that our role is one where we provide advice and counsel to the Court, not one where we leverage a bargaining position as a traditional party in a mediation would. But we also recognize that in a case like this, MHA and AMAC must be a voice for the people not in the courtroom or this mediation space on the point of whether the Plaintiff and Defendant's proposed settlement is "fair, adequate, and reasonable."

Our concern at this juncture is that those voices are being diluted. Through no fault of the Court's doing, it would appear to MHA that between the Defendant's incoherence on their positions and the Plaintiff's insistence on these remedies being the sole remedies on the table for mediation we are rushing to a conclusion that we do not feel would be fair or reasonable, and least of all adequate to secure a safe, humane Portland for those with mental health issues. This follows what we have observed to be a practice of the Plaintiff and the Defendant to first delay then rush to a remedy, effectively squeezing out discussion on topics they do not want to discuss any further. Principle among them, the parts of the settlement that have an active, direct benefit for people with a mental illness, like Paragraphs 89 about mental health services.

We are including a letter from Mark Chasse, MHA member and brother of James Chasse who was killed by the Portland Police in 2006, written as testimony to the Court for the most recent status hearing. We think it conveys our pattern-observation well.

Again, we do not believe that this is the Court's fault in the least. To the contrary, the Federal Courts have been the only venue in this case wherein we have felt heard. But we need to identify this practice as we think it has an effect on the course of mediation, the effectiveness the remedies, and the likelihood of the Court approving the remedy amendments as fair, reasonable, and adequate.

We now turn to the items for discussion tomorrow. This memorandum will discuss three items.

1. Par. 194 from the Plaintiff's Proposed Amended Agreement – Body Worn Cameras
2. The PPA's proposal
3. The Court's Special Master proposal

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BODY WORN CAMERAS

First, MHA would like to state that accountability and oversight are the purposes for a BWC program being implemented. It is a remedy for documented unconstitutional use of force and the ongoing inability or unwillingness to hold officers accountable for unconstitutional uses of force or out of policy policing. This remedy is part of a settlement agreement that has a primary purpose of prohibiting police harm to people with mental illness. As such, all BWC policies must be aimed at and in services of those purposes and goals of reducing force and increasing accountability. With the wrong policies around recording, use of the footage, and not enforcing those policies, a BWC program could quickly turn from a remedy seeking greater justice and accountability to a tool for greater injustice and harm to the community.

Second, MHA continues to have concerns that the money and time and effort to prevent unconstitutional and harmful police interactions with people with mental illness and hold accountable the officers who do that harm is being spent in ways that are secondary to preventing that harm or only address those purposes indirectly. The money and effort should be going primarily to create better community mental health and provide direct services to those experiencing mental illness. Simply implementing a BWC program will not, as we have seen across the country, stop police from harming members of the public, particularly those suffering from mental illness. The Portland Street Response program should, given the right policies and purposes, be able to limit the interactions between police and persons experiencing mental health crises, which would also impact PPB staffing needs, as described below.

Additionally, the problem of people with mental illness being harmed or killed by PPB officers may be mitigated with better hiring, firing, supervision, training, and accountability policies. Again, this goes to proper and effective staffing. We have seen that the City hires too many police officers who have negative attitudes towards persons with mental illness, towards homeless persons, towards people in Portland generally, and towards any measure of policy accountability. The City has allowed PPB to be its own body that believes it can do and say what it wants outside of what the City directs it to do and outside of the actions of professional public servants.

You have asked the parties and amici to discuss the following ideas for BWC policies, and below are the MHA's positions. MHA also responds to the DOJ's proposed paragraph 194.

1. Who wears – MHA agrees with proposed 194(1)(a) that all officers, sergeants, and any other PPB command or member who interacts with the public in person for any law enforcement purpose.

2. Who owns (who can access and how) – Auditor's office should own, direct, control, and release footage. Requests from PPB, prosecutors, and the public should go through the Auditor. PPB must not control the footage, make the policies about how and when the footage should be released, or create and manage the contract for the cameras and footage storage with the vendor.

3. When review – Two issues: recording officer review and review by others. MHA believes, in light of the purpose for the implementation of the BWC program, that there is no reason for the

recording officer to review the video outside of a disciplinary proceeding and only after one has been initiated. Similarly, there is no reason that a supervisor should review the footage until they have to review the use of force report or complaint by member of the public.

If review by the recording officer is allowed, it must only happen after the officer has filed their report and after any required interview has been completed. The filed report cannot be adjusted or amended in any way after the officer views the recording. If any supplemental report is allowed, it must be filed separately from the initial report and the officer must not be able to edit the initial report. Review before a report is filed and any editing of the initial report does not serve the purpose of understanding what the officer knew, thought, and experienced at the time that they used force, which is required for constitutional review of the force. Any knowledge gained by the recording officer from the video does not, and must not, have any bearing on the constitutionality of the officer's use of force at the time the force was used. Again, the BWC program is a remedy for unconstitutional force and failures to hold officers accountable for that force. Allowing officers to review footage, particularly before a report is written, does not serve that purpose. An officer viewing the footage as part of being held accountable for improper force or violations of policy does serve to help the officer understand the violation. Review before that time does not serve the aims of this remedy.

PPB members other than those authorized to review for policy violations must be restricted from viewing recordings. Officers must not have access to one another's recordings, except for the purpose of review and discipline by authorized reviewers.

In a police shooting or in-custody death, the video cannot not be reviewed by police, employees of the City, or anyone who could relay contents of the videos to the recording officer until after a critical level of investigation has been completed (ex.--reports filed by and interviews of all of the involved officers). The public's interest in having an uncorrupted investigation outweighs any exigent investigatory or oversight purpose that could reasonably exist in these cases. History has shown that others can and have acted as surrogates in reviewing evidence and passing it to the involved officers or to those who then pass it along to the involved officers. Any rules that prohibit pre-reviewing video before writing a report or otherwise giving a statement that do not address and prevent information from being passed in this waywill leave the rule potentially meaningless.

4. When activated – The BWC policy must limit as much as possible the officer discretion and decision-making about when they are required to record. The BWCs should be activated any time the camera wearer is in any public place or is in public view or the view of any member of the public. That would provide the most comprehensive and bright line rule that would prevent PPB members from having to decide if certain interactions should be documented. Alternatively, and at a minimum, BWC wearers must activate the cameras as soon as they begin or intend to begin any interaction or contact with, or pursuit of, any member of the public. "Contact" must be defined as any interaction with orobservation of a member of the public. Interaction" or "contact" should include the time that officers talk to one another while initiating or while still involved with an interaction or contact with members of the public. While notice of recording must be given to those persons being recorded when the officer interacts with them, very few categories of people should be able to opt out, such as victims of crimes, but only after the officer balances the value of

recording with the reason or circumstances the person has asked for the recording to stop. Privacy and other restrictions on how the videos are used and released can make up for privacy concerns.

These activation policies must be enforced at all times through progressive discipline. One of the greatest failures with BWC policies is the failure to make the recording mandatory and enforce that mandatory recording for all officers. BWCs are useless for preventing harm from and increasing accountability for unconstitutional use of force if the BWC policies are not enforced. The punishment should be at least similar to the punishment for failing to do other required police duties and must be progressively severe for repeated failures to follow the policies.

Police reports and use of force reports should include boxes to check to mark whether the officer had their BWC on and a place to explain why or why not. The recording officers must give concrete justifications for failing to record when required, and those justifications must be properly reviewed.

Audits of recording practice must occur regularly. Including random audits of the checked boxes on forms were within policy, whether officers failed to turn on their cameras while others had theirs on, and whether supervisors properly approved those decisions.

MHA agrees that certain actions should automatically trigger the recording and that there should be at least 30 seconds of recorded video before and after the cameras are activated.

5. Management use – Management should review footage only to review use of force reports and complaints. Again, the policies must prevent anyone from viewing the recording and telling the offending recording officer that there are problems or describing details. Review must come after the recording officer files a report and to review that report or in the context of an IPR/successor review. Management/reviewers must not be able to copy, share, send, change, edit, delete, or do anything with the footage other that view.

6. Public release – The policy regulating the release must be clear and available to the public. The recordings should be immediately released upon request of the person interacting with the officer, the person's parents or guardians, or the person's successors. Footage of police use of force incidents should be made available under a public records request and, in that case, must protect the identity of the people in the footage and privacy concerns must be considered before release.

Other DOJ Paragraph 194(1) considerations:

(a) Officers – Agree. All those who perform law enforcement activities while interacting with the public must be recording.
(b) Notice – Agree – MHA would be willing to work with the parties to help shape the verbal notice to be most effective for people with mental illness.
(c) Activation and Buffering – as explained above.
(d) Audit – As explained above, management must not be able to review footage before the wearing officer has written and filed a use of force report. IPR or its successor must be able to have access for review of force and other policy complaints and allegations of police misconduct. All reviews must be tracked for who reviewed, when, and for what purpose. Those reviews must be audited for being in line with policies. Both policies and the software

must prohibit PPB members and management from copying, sharing, downloading, deleting, modifying, or anything else other than viewing when authorized.

(e) Prereview – There is no need, particularly for the purposes of the settlement agreement and this remedy, for an officer to prereview footage before filing a report and being interviewed, or even afterward under all but a few circumstances.

(f) Control of video – Control of access should come from the Auditor's office and stored by a third party vendor contracted with the Auditor's office.

(g) Use – as described above – Only use for review of misconduct should be allowed and tightly restricted to best aim at accountability for police misconduct.

(h) Non-Public Record Disclosure – BWC should not be a tool for law enforcement investigation or prosecution tool as that plays no role in why they are being implemented as a remedy. If available to District Attorney, they must also be as readily available to the defendant. Non-Public use should only be for the purposes of review of force, review of other misconduct complaints. Footage that protects people's privacy may be used in training only after any complaint or review has been resolved. Audits of policy adherence, as described above, are also proper and necessary uses of the footage. General review by PPB officers or management for officer performance, unless heavily restricted and regulated, is likely to end up continuing PPB's rubber stamping of bad-actors as acceptable.

PPA STAFFING PROPOSAL

This settlement agreement is about reducing the violations of civil rights by the Portland Police against persons with mental illness, full stop. The remedies for violations are about the failures of both the individual members of PPB to police constitutionally and the failures of PPB supervision, policy, and accountability when harm is done by PPB members.

This budget ask/membership drive by the PPA serves to redirect the goals of both the settlement agreement and remedies. The PPB/PPA are not shy in complaining about how more than half of their calls are related to houseless, people with a mental illness, or substance abuse issues—things they "didn't sign up for" when they became police officers. All agree that the best way to reduce police harm on people with mental illness is to reduce police interactions. Moreover, the City and PPA fail to acknowledge that the lack of police officers is due to them quitting and retiring.

In that way, any staffing increases should be for Portland Street Response personnel. The pilot study has been completed, and the enthusiastic recommendation is to make PSR full time and city wide.[1] The expansion of that program city-wide would both reduce police interactions with people with mental illness and also require less PPB staffing because they would no longer have to go to those calls that they are not equipped to handle and that do not involve enforcing the law, or at least that would greatly reduce the need for PPB members to respond to those calls.

Only once that is done and the effects understood should the PPA be asking for more officers. And that should not be done within the bounds of this settlement agreement. A lack of PPB members is not the reason that PPB members violate people's rights, cause harm to the public, or fail to follow

[1] https://www.opb.org/article/2021/10/05/portland-street-response-oregon-911-police-alternative/

PPB directives. That has more to do with a lack of accountability, a failure within the culture of PPB (as seen by the PPB members' reactions and record number of officers quitting and retiring once accountability is being pushed by the public, City, and County DA), and the problems of how PPB recruits, hires, and trains. PPB does not need more police, and they certainly do not need more police in the context of a remedy for past and ongoing violations of the settlement agreement.

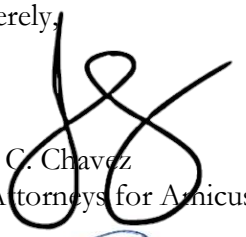
SPECIAL MASTER OR COURT MONITOR

Judge Simon asked the parties to consider the necessity for an independent Court Monitor to be appointed in this case. Having discussed the matter internally, MHA agrees that a Court Monitor would benefit this litigation and the safety of Portlanders with mental illness.

CONCLUSION

Again, we greatly appreciate your willingness to aid the parties in coming to agreement on these pressing issues. We look forward to meeting with you in person and on Zoom tomorrow.

Sincerely,



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