

File No. 190994

Committee Item No. 15

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: October 17, 2019

Board of Supervisors Meeting:

Date: \_\_\_\_\_

#### Cmte Board

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|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

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Prepared by: John Carroll

Date: October 11, 2019

Prepared by: John Carroll

Date: \_\_\_\_\_

1 [Settlement of Lawsuit - Riana Buffin and Crystal Patterson - City to Comply with New Pretrial  
2 Detention Policies and Provide Funding for Pretrial Diversion Project]

3 **Ordinance authorizing settlement of the lawsuit filed by Riana Buffin and Crystal**  
4 **Patterson against Sheriff Vicki Hennessy in her official capacity as Sheriff; the**  
5 **settlement prohibits the Sheriff from using the existing bail schedule for arrested**  
6 **individuals and from using any similar policy that determines the existence or length of**  
7 **pre-arraignment detention based on an arrestee's ability to pay, requires the Sheriff to**  
8 **release certain arrestees within 18 hours from the time of booking under some**  
9 **circumstances, and is conditioned on the City providing additional funding to the Own**  
10 **Recognizance Project of the San Francisco Pretrial Diversion Project; the lawsuit was**  
11 **filed on October 28, 2015, in U.S. District Court for the Northern District of California,**  
12 **Case No. 15-CV-04959-YGR; entitled Riana Buffin and Crystal Patterson, on behalf of**  
13 **themselves and others similarly situated v. Vicki Hennessy in her official capacity as**  
14 **the San Francisco Sheriff, et al.; the lawsuit involves claims that the Sheriff's use of the**  
15 **San Francisco Superior Court's bail schedule as a basis for pre-arraignment detention**  
16 **or release of arrestees violates the United States Constitution.**

17  
18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Consistent with the terms of a stipulated final judgment entered on  
20 September 3, 2019, the Board of Supervisors hereby approves the stipulated final judgment in  
21 the action entitled Riana Buffin and Crystal Patterson, on behalf of themselves and others  
22 similarly situated v. Vicki Hennessy in her official capacity as the San Francisco Sheriff, et al.,  
23 U.S. District Court for the Northern District of California, Case No. 15-CV-04959-YGR, by the  
24 terms set forth in the stipulated final judgment, available in Board of Supervisors File  
25 No. 190994. Under the stipulated final judgment, the Sheriff will be prohibited from using the

1 bail schedule or any form or derivative thereof that determines the existence or length of pre-  
2 arraignment detention based on an arrestee's ability to pay; and the Sheriff will be required to  
3 release certain arrestees within 18 hours from the time of booking unless certain conditions  
4 are met. The stipulated judgment is conditioned on the City providing additional funding to  
5 enable the Own Recognizance Project of the San Francisco Pretrial Diversion Project to  
6 operate 24 hours a day, seven days a week. The lawsuit involves claims that the Sheriff's use  
7 of the San Francisco Superior Court's bail schedule as a basis for pre-arraignment detention  
8 or release, as required by state law, violates the United States Constitution.

9 Section 2. The above-named action was filed in U.S. District Court for the Northern  
10 District of California on October 28, 2015, and the following parties were named in the lawsuit:  
11 Plaintiffs Riana Buffin and Crystal Patterson, on behalf of themselves and others similarly  
12 situated; Defendant Vicki Hennessy in her official capacity as the San Francisco Sheriff;  
13 initially named and later dismissed Defendants City and County of San Francisco, State of  
14 California, and Attorney General of the State of California; and Intervenor Defendants  
15 California Bail Agents Association.

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APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA  
City Attorney

  
\_\_\_\_\_  
WAYNE SNODGRASS  
Deputy City Attorney

RECOMMENDED:

SHERIFF'S DEPARTMENT

  
\_\_\_\_\_  
VICKI HENNESSY  
Sheriff

FUNDS AVAILABLE:

  
\_\_\_\_\_  
BEN ROSENFIELD  
Controller

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Attorneys for Plaintiffs  
*Riana Buffin and Crystal Patterson*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

VICKI HENNESSY in her official capacity  
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**NOTICE OF STIPULATED FINAL  
JUDGMENT REMEDYING  
CONSTITUTIONAL VIOLATION**

1 Plaintiffs and Defendant the San Francisco Sheriff are pleased to inform the Court that,  
2 with the assistance of Chief Magistrate Judge Spero, they have reached agreement as to the  
3 appropriate remedy to be imposed in this case, with two exceptions. The Stipulated Final  
4 Judgment Remediating Constitutional Violation is attached as **Exhibit A**.

5 First, the parties have agreed to modify the procedures for seeking alterations on release,  
6 as currently reflected in California Penal Code § 1269c, in two ways: (1) pursuant to Section IV.A  
7 of Exhibit A, for arrestees charged with an offense not enumerated in California Penal Code  
8 § 1270.1, a peace officer may file a declaration to extend the 18-hour automatic release deadline  
9 by 12 hours if there is reasonable cause to believe that an arrestee may not appear at arraignment,  
10 or poses a threat to public safety; and (2) pursuant to Section IV.B of Exhibit A, for arrestees  
11 charged with offenses not enumerated in California Penal Code § 1270.1(a), the arrestee or their  
12 attorney, friend or family member shall have the right to submit an application under § 1269c to  
13 the magistrate or commissioner seeking a swifter judicial determination and release than the  
14 automatic 18-hour release provision. Plaintiffs also seek to modify these procedures a third way  
15 (Section IV.C), which is to provide all arrestees charged with offenses enumerated in California  
16 Penal Code § 1270.1(a) the right to submit an application (by the arrestee or their attorney, friend  
17 or family member) under § 1269c to the magistrate or commissioner seeking OR release prior to  
18 arraignment. The Sheriff does not stipulate to this provision and takes no position on whether the  
19 Court should adopt it. The parties agree that the Court's decision on this issue shall not impact  
20 any other provision of the stipulated final judgment.

21 Second, per Section VI of Exhibit A, the parties have not reached agreement as to  
22 attorneys' fees and costs, and expect to submit briefs on the matter to the Court following the entry  
23 of final judgment if an agreement as to fees and costs cannot ultimately be reached.

24 We respectfully request that the Court enter final judgment at its earliest convenience, so  
25 that the relevant time periods for implementation can begin. We would of course be pleased to  
26 address any questions the Court may have.

27 //

28 //

1 Dated: August 30, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

Robert E. Sims

Sadik Huseny

Tyler P. Young

4 By: /s/ Sadik Huseny

Sadik Huseny

6 *Attorneys for Plaintiffs*

*Riana Buffin and Crystal Patterson*

8 Dated: August 30, 2019

Respectfully submitted,

DENNIS J. HERRERA

City Attorney

10 By: /s/ Jeremy M. Goldman

Jeremy M. Goldman

12 *Attorneys for Defendant*

*Sheriff Vicki Hennessy*

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**SIGNATURE ATTESTATION**

I, Sadik Huseny, am the ECF user whose ID and password are being used to file this Notice of Stipulated Final Judgment Remediating Constitutional Violation. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

Dated: August 30, 2019

/s/ Sadik Huseny  
Sadik Huseny



# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

VICKI HENNESSY in her official capacity  
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**STIPULATED FINAL JUDGMENT  
REMEDYING CONSTITUTIONAL  
VIOLATION**

1 As set forth in the Order Granting Plaintiffs' Motion for Summary Judgment, the San  
2 Francisco Sheriff's Department's use, as required by current California law, of the Superior Court  
3 of California, County of San Francisco Felony-Misdemeanor Bail Schedule ("Bail Schedule")  
4 violates the 14th Amendment of the U.S. Constitution. Accordingly, to remedy the Constitutional  
5 violation and harm, and pursuant to stipulation by the parties, the Court orders the following for  
6 purposes of pre-arraignment release procedures:

7 (I) The San Francisco Sheriff's Department (hereafter "Sheriff") is enjoined from  
8 using the Bail Schedule, or any form or derivative thereof that requires or has as its  
9 effect that the existence and duration of pre-arraignment detention is determined by  
10 an arrestee's ability to pay.

11 (II) For all arrestees booked on an offense not enumerated in California Penal Code  
12 § 1270.1(a), and who are arrested without a warrant and are not otherwise ineligible  
13 for pre-arraignment OR release under state law:

14 (A) The arrestee's PSA Report, along with all other portions of the OR  
15 Workup reasonably available to the OR Project, shall be submitted to  
16 the San Francisco Superior Court within eight (8) hours from the time  
17 of booking.<sup>1</sup>

18 (B) The Sheriff shall release the arrestee at eighteen (18) hours from the  
19 time of booking if: (1) the Superior Court has not rendered a decision  
20 on OR release at that time (which decision shall otherwise control) and  
21 (2) the PSA Report for the arrestee does not indicate "release not  
22 recommended."

23 <sup>1</sup> For purposes of this Stipulated Judgment, "Own Recognizance" or "OR" release refers to any  
24 release not conditioned on payment of bail, and includes releases subject to any non-financial  
25 conditions. The OR Workup refers to the report created by the OR Project of the San Francisco  
26 Pretrial Diversion Project (hereafter, "OR Project") which contains the arrestee's criminal  
27 history, the police report, a cover sheet, and the PSA Report. "Booking" refers to the time that  
28 ID confirmation for an arrestee is received. The Sheriff shall maintain all reasonable procedures  
to ensure that ID confirmation is received as swiftly as possible. To the extent circumstances  
beyond the OR Project's or the Sheriff's control render the completion of the PSA Report  
impossible within eight (8) hours, the OR Project will exercise best efforts to complete the PSA  
Report as soon as feasible. The automatic release provision of Section II does not apply in cases  
where the OR Project has been unable to complete the PSA Report for reasons beyond the OR  
Project's or the Sheriff's control.

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(C) Release pursuant to this Section shall treat as binding the recommendation of the PSA Report as to any conditions of release, and release procedures shall be carried out as if the release recommendations in the PSA Report had been adopted by the Superior Court. No arrestee shall be entitled to release without signing an agreement to be bound by the conditions of release contained in the PSA Report's recommendation. An arrestee who is being released subject to recommended Assertive Case Management (ACM) procedures by the OR Project shall not be released from custody before completing any procedures necessary to implementing the release conditions.

(III) For all arrestees booked on an offense enumerated in California Penal Code § 1270.1(a), for whom pre-arraignment OR release is not available under current law, the provisions of Section II shall not apply.

(IV) The procedures for seeking alterations on release, as currently reflected in California Penal Code § 1269c, shall be modified as follows:

(A) For all arrestees booked on an offense not enumerated in California Penal Code § 1270.1(a), a peace officer who (1) has reasonable cause to believe that an arrestee may not appear at arraignment, or poses a threat to public safety, or (2) expects that specific information not yet provided will be delivered within the next twelve (12) hours and will probably provide reasonable cause to believe that an arrestee may not appear at arraignment, or poses a threat to public safety, shall prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his or her belief and file it with a magistrate or commissioner. Such a declaration may be filed at any point throughout the 18-hour period referenced in Section II, and will, without further judicial action, serve to extend the 18-hour period by an additional twelve (12) hours.

(B) For all arrestees booked on an offense not enumerated in California Penal Code § 1270.1(a), the arrestee or their attorney, friend or family

1 member shall have the right to submit an application under California  
2 Penal Code § 1269c to the magistrate or commissioner seeking a  
3 swifter judicial decision than the automatic 18-hour release provision  
4 provided for in Section II. Such an application shall not alter the  
5 obligation in Section II.A.

6 (C) For all arrestees booked on an offense enumerated in California Penal  
7 Code § 1270.1(a), the arrestee or their attorney, friend or family  
8 member shall have the right to submit an application under California  
9 Penal Code § 1269c to the magistrate or commissioner seeking OR  
release prior to arraignment.

10 (V) The obligations of this Stipulated Judgment are conditioned on the enactment of  
11 legislation by the City and County of San Francisco approving the Stipulated  
12 Judgment and providing additional funding to enable the OR Project to operate  
13 twenty-four (24) hours a day, seven (7) days a week. The Sheriff shall expend all  
14 reasonable efforts to seek a final vote on the enactment of such legislation within  
15 ninety (90) days of entry of this Stipulated Judgment. The Stipulated Judgment  
16 shall take full effect ninety (90) days after the enactment of such legislation. If the  
17 City and County of San Francisco has, notwithstanding the Sheriff's efforts, not  
18 enacted such legislation within ninety (90) days of entry of this Stipulated  
19 Judgment, the Stipulated Judgment shall be vacated, and unless the parties jointly  
20 notify the Court that they have agreed to extend the time, the Court shall issue its  
own final judgment in this matter.

21 (VI) The parties shall separately file, and the Court shall separately rule, on the issue of  
22 attorneys' fees and costs.

23 (VII) The Court shall retain jurisdiction over this matter until eighteen (18) months after  
24 the terms of this injunction go into full effect pursuant to Section V, and Plaintiffs  
25 shall be provided comprehensive reports every three (3) months in order to monitor  
26 the Sheriff's compliance with this Stipulated Judgment and its efficacy at  
27 remedying the constitutional harm, and to bring matters to the Court's attention as  
28 appropriate. The parties shall meet and confer in good faith so as to ensure the  
reports provided are sufficient for such monitoring purposes. The Sheriff will make

1 good faith efforts to begin to gather data regarding time of arraignment for all  
2 arrestees. The reports are currently expected to include:

- 3 • Data regarding arrestees' initiation of booking, charges, time of ID  
4 Confirmation, and time of PSA Report submission and OR Workup  
5 submission(s);
- 6 • Data regarding PSA Report recommendations;
- 7 • Data regarding the operation of Section II, including but not limited  
8 to data regarding the arrestees deemed ineligible for pre-arraignment  
9 release pursuant to Section II.B;
- 10 • Data regarding OR judicial decisions;
- 11 • Data regarding all automatic releases pursuant to Section II;
- 12 • Data regarding individual arrestees' total length of incarceration and  
13 the manner and timing of any release;
- 14 • Data regarding the number of affidavits submitted by peace officers  
15 pursuant to Section IV.A, including information on timing;
- 16 • Data regarding the number of applications submitted on behalf of  
17 arrestees pursuant to Sections IV.B and IV.C, including information  
18 on timing and ultimate determinations, to the extent such  
19 information (if any) is available.

20 The first report shall include data from the year prior, including and up to the first  
21 three months from the date the provisions of this Order become operative and shall  
22 be due thirty (30) days after the expiration of that period, with additional reports to  
23 be filed every three months thereafter. This provision imposes no obligation except  
24 as to data in the possession of the Sheriff or the OR Project, or reasonably available  
25 to them, and shall not require the provision of data other than is maintained or will  
26 be maintained in the ordinary course of business.

27 (VIII) This Stipulated Judgment is intended to address the timing of release decisions pre-  
28 arraignment and is not otherwise intended to interfere with changes to the processes  
by which the Superior Court makes release determinations, including changes to  
the way in which risk assessments are conducted or by which entity they are  
conducted. Nothing in this Stipulated Judgment shall prevent the Sheriff from  
releasing any person subject to terms of pretrial release who has received an  
individualized determination by a judicial officer.

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(IX) To the extent the Superior Court, California legislature, or any other entity seeks to implement material changes that may implicate the terms of this Stipulated Judgment or the pre-arraignment processes set forth herein, including to the manner in which high risk arrestees may be identified by the PSA Report for the purposes of the exception to the automatic release provisions of Section II.B, the parties shall meet and confer over potential alterations to the terms of this Stipulated Judgment and thereafter notify this Court of any joint proposal or inability to reach agreement, which may include petitioning the Court to dissolve or modify the Stipulated Judgment.

Dated:

---

The Hon. Yvonne Gonzalez Rogers  
United States District Judge

**LEGISLATION RECEIVED CHECKLIST**

Date 9/30/19

File Number (if applicable) 190994

- Legislation for Introduction (NEW)
- Legislation Pending in Committee (AMENDED)
- Legislation for Board Agenda (AMENDED)

- ▶▶▶ Legislative Clerk
- ▶▶▶ Committee Clerk
- ▶▶▶ Deputy Clerk

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 2019 SEP 30 AM 9:23

**Supervisor, Mayor, and Departmental Submittals**

**Grant Ordinance**

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Grant budget/application
  - Grant information form, including signed disability checklist
  - Letter of Intent or grant award letter from funding agency
  - Contract, Leases/Agreements (if applicable)
  - Ethics Form 126 (if applicable) in **Word** format
  - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Ordinance**

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Settlement Report/Agreement (for settlements)
  - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Grant Resolution**

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Grant budget/application
  - Grant information form, including signed disability checklist
  - Letter of Intent or grant award letter from funding agency
  - Contract, Leases/Agreements (if applicable)
  - Ethics Form 126 (if applicable) in **Word** format
  - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Resolution**

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Settlement Report/Agreement (for settlements)
  - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 554-3869      City Attorney  
 Name and Telephone Number      Department