

File No. 190994

Committee Item No. 15

Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: October 17, 2019

Board of Supervisors Meeting:

Date: Nov. 12, 2019

Cmte Board

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- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER

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Prepared by: John Carroll

Date: October 11, 2019

Prepared by: John Carroll

Date: Nov. 7, 2019

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

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.

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Dated: August 30, 2019

Respectfully submitted,
LATHAM & WATKINS LLP
Robert E. Sims
Sadik Huseny
Tyler P. Young

By: /s/ Sadik Huseny
Sadik Huseny

*Attorneys for Plaintiffs
Riana Buffin and Crystal Patterson*

Dated: August 30, 2019

Respectfully submitted,
DENNIS J. HERRERA
City Attorney

By: /s/ Jeremy M. Goldman
Jeremy M. Goldman

*Attorneys for Defendant
Sheriff Vicki Hennessy*

SIGNATURE ATTESTATION

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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.¹

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 ¹ 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
10 release prior to arraignment.

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

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

25 (VII) The Court shall retain jurisdiction over this matter until eighteen (18) months after
26 the terms of this injunction go into full effect pursuant to Section V, and Plaintiffs
27 shall be provided comprehensive reports every three (3) months in order to monitor
28 the Sheriff's compliance with this Stipulated Judgment and its efficacy at
remediating the constitutional harm, and to bring matters to the Court's attention as
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 654-3869

Name and Telephone Number

City Attorney

Department

Clerk's Office/Forms/Legislation Received Checklist (1/2015) for more help go to: sfbos.org/about the board/general/legislative process handbook