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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)	Case No. CV 00-11769 GAF (RCx)
)	
Plaintiff,)	MEMORANDUM AND ORDER RE:
)	TERMINATION OF CONSENT
v.)	DECREE
)	
CITY OF LOS ANGELES et al.,)	
)	
Defendants.)	
)	
_____)	

I.

INTRODUCTION

The parties to this litigation, the City of Los Angeles and the United States of America, represented by the Department of Justice (“DOJ” and together referenced as “the Parties”), jointly move to terminate the Consent Decree (“Decree”) entered by this Court in June 2001. That Decree settled a lawsuit brought by DOJ alleging that the Los Angeles Police Department (“LAPD”) was engaging in a pattern and practice of unlawful conduct “made possible by the failure of the City defendants to adopt and implement proper management practices and procedures.” Though the Parties nominally seek termination based on their conclusion that the principal objectives of

1 the Decree have been met, they ask the Court not simply to close this case, but also to
2 approve a proposed Transition Agreement over which the Court would retain
3 jurisdiction. The Transition Agreement would impose ongoing reporting requirements
4 in three specifically identified areas – (1) the utilization of the Decree-mandated
5 Training Evaluation and Management System (“TEAMS II”); (2) continued
6 implementation of programs and policies to eliminate biased policing; and (3)
7 implementation of the Decree’s financial disclosure provisions. The Parties propose
8 the termination of the Decree and the implementation of the Transition Agreement
9 because, they assert, the City is in substantial compliance with the Decree’s terms and
10 conditions and the Transition Agreement retains the Court’s jurisdiction over three
11 important areas where more work needs to be done. The Office of the Independent
12 Monitor of the Los Angeles Police Department (“Monitor”), who has overseen
13 implementation of the Decree over the past eight years, concurs.

14 Community Intervenors, led by the American Civil Liberties Union (“ACLU”),
15 oppose the motion and object to the substitution of the Transition Agreement in place
16 of the Decree. Community Intervenors contend that the Monitor’s Final Report
17 indicates that the Decree cannot be terminated because the City has not shown that it
18 has met the “substantial compliance” standard set forth in Paragraph 179 of the Decree.
19 They also argue that the case law cited by the Parties in their joint motion does not
20 support termination of the Decree under present circumstances. Community
21 Intervenors, therefore, urge that the Decree in its entirety should be maintained in
22 effect with the proviso that responsibility for the implementation of the Decree should
23 be transferred to the Office of the Inspector General (“OIG” or “Inspector General”).¹

24
25 ¹The Parties and Community Intervenors all threaten dire consequences if the Court rejects their respective
26 positions. The City claims that the continued oversight under an unmodified Decree would significantly
27 undermine fragile officer morale and would amount to a repudiation “of all the hard work and
28 commitment to reform achieved by the men and women of the LAPD.” (Joint Supp. Mem. of P. & A. at
17.) DOJ argues that an extension of the Decree as initially written “sends a powerful message that even
where reform has occurred . . . these municipalities may not be released from their consent decrees even
where all the parties agree the requirements have been fulfilled.” (*Id.* at 16.) According to DOJ, such a

1 Community Intervenors base their opposition to the motion principally on the
2 language of Paragraph 179 defining substantial compliance. They vigorously assert
3 that the language should be interpreted to “mean what it says” – that the Decree may
4 not be terminated unless and until the City is in substantial compliance with each
5 material term of the Decree. Because, according to Community Intervenors, that
6 standard has not been met, the Decree can be neither terminated nor modified.
7 However, a literal interpretation of Paragraph 179 actually undermines the argument of
8 Community Intervenors. Paragraph 179 unambiguously states that the Decree
9 automatically terminates in the absence of a motion by DOJ to extend the duration of
10 the Decree and places on the City the burden of proving “substantial compliance” only
11 where DOJ has made such a motion. For that reason, the position of Community
12 Intervenors cannot be sustained merely by reference to the language of the Decree.

13 Having given the arguments of the Parties and Community Intervenors extended
14 consideration, the Court concludes that the present motion should be viewed
15 essentially as a motion to the Court, sitting in equity, to modify the Decree.
16 Controlling case law holds that the Court must resolve such a motion under a flexible
17 standard with the goal of achieving a result consistent with the overall objectives of the
18 Decree. As recently observed by the Supreme Court, consideration of such a motion
19 implicates “the traditional power of a court of equity to modify its decree in light of
20 changed circumstances,” Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 441 (2004),

21 _____
22 result will make it much more difficult to resolve future institutional reform litigation short of trial.
23 Community Intervenors take precisely the opposite point of view. Though acknowledging the substantial
24 changes that have been brought about through the implementation of the Decree, they warn that a decision
25 granting the motion “creates a different, dangerous lesson for other jurisdictions – that decrees may be
26 lifted early despite noncompliance.” (See Cmty. Intervenors’ Resp. to Joint Mem. of P. & A. at 5 n.2.)
27 The litigants have also barraged the Court with numerous submissions which, in addition to proper legal
28 authorities, include newspaper reports, editorials, and columns advocating for the retention or termination
of the Decree, or otherwise reporting on issues that they consider important. (See, e.g., Joint Supp. Mem.,
Decl. of Julie Raffish, Exs. B-F; Decls. in Support of Status Report of Cmty. Intervenors, Decl. of Peter
Bibring, Exs. B-D, F, K-N.) The arguments and submissions convince the Court only that the Parties and
Community Intervenors believe that hyperbole will advance their arguments. It will not. The motion must
be resolved through a careful consideration of controlling Ninth Circuit and Supreme Court precedent
governing the termination, modification, and extension of consent decrees.

1 which includes consideration of whether continued enforcement is “detrimental to the
2 public interest,” Horne v. Flores, 129 S. Ct. 2579, 2593 (2009). These and a number of
3 similar cases stress the importance of flexibility in institutional reform litigation, like
4 the case at hand, because the public interest includes an assessment of “sensitive
5 federalism concerns.” Horne, 129 S. Ct. at 2593. Thus, even where an institutional
6 defendant has fallen short in meeting the precise requirements of a decree, the court
7 must “determine, using a holistic view of all the available information,” whether
8 compliance overall was substantial even assuming some level of noncompliance.
9 Labor/Cmty. Strategy Ctr. v. Los Angeles County Metro. Transp. Auth., 564 F.3d
10 1115, 1122 (9th Cir. 2009) (“MTA”). Under this standard, and in view of the
11 willingness of the Parties to continue under the jurisdiction of the Court, though under
12 a more narrowly focused agreement, the Court accepts the findings of the Monitor
13 concerning the significant changes made within the LAPD and concludes that the
14 motion should be **GRANTED**. (Office of the Independent Monitor of the Los Angeles
15 Police Department, Final Report at 2 (“Final Report”).) The following sets forth a
16 more detailed explanation of the Court’s reasoning.

17 II.

18 BACKGROUND

19 A. THE DECREE

20 In United States v. City of Los Angeles, CV 00-11769, a lawsuit brought by the
21 United States Department of Justice under 42 U.S.C. § 14141, this Court entered
22 judgment, in the form of a 94 page Decree containing 187 numbered paragraphs,
23 mandating numerous reforms of the LAPD. The Decree, which was entered June 15,
24 2001, contained numerous provisions designed to address all forms of potential
25 misconduct and corruption within the LAPD, provided that the Court retained
26 jurisdiction over implementation of the Decree during its term, and further provided
27 that “[t]he Agreement shall terminate five years from the effective date without further
28 action of the Court” unless the Department of Justice moved to extend it. (Decree ¶

1 179.) The Decree placed the burden on the City, in any response to such motion, “to
2 demonstrate that it has substantially complied with each of the provisions of the
3 Agreement and maintained substantial compliance for at least two years.” (Id.)

4 At the five year mark, the Parties jointly moved to extend the Decree for a
5 period of two years. (Docket No. 309.) The Court conducted a hearing on that motion
6 and ultimately extended the Decree for a period of three years rather than the two years
7 requested. The Court found that the City was not remotely close to complying with a
8 number of critically important elements of the Decree, including the development and
9 implementation of TEAMS II, which the Court has always considered essential to
10 meaningful reform. The Monitor concurred on the record at the time of the hearing
11 where he stated, “we haven’t finished the job.” (May 16, 2006 Transcript at 33.) The
12 Court therefore extended the Decree for three years to June 15, 2009.

13 **B. THE MOTION TO TERMINATE THE DECREE AND TO APPROVE THE INITIAL**
14 **PROPOSED TRANSITION AGREEMENT**

15 Those three years have passed, and the Court now confronts a joint request by
16 DOJ and the City to terminate the Decree and substitute in its place a Transition
17 Agreement that transfers oversight to the Los Angeles Police Commission and its
18 Office of Inspector General and retains the Court’s jurisdiction over three elements of
19 the Decree – the utilization of TEAMS II, the elimination of biased policing, and the
20 implementation of the financial disclosure provision. The Parties submitted the
21 Proposed Transition Agreement to the Court in early June; the Court received briefing
22 on the proposal and conducted a hearing on June 15, 2009.

23 In writing and at the hearing, Community Intervenors opposed the motion
24 principally on the ground that the City has failed to show substantial compliance with
25 each of the terms of the Decree, and urged the Court to extend the Decree in its entirety
26 but with the Police Commission’s Office of Inspector General undertaking the role of
27 monitoring compliance. A second intervenor, the Los Angeles Police Protective
28 League (“LAPPL”), supported the termination of the Decree but objected to certain

1 provisions of the proposed Transition Agreement because of the following concerns:
2 (1) it eliminated the LAPPL's standing to participate in the reform process thereby
3 precluding the union's ability to protect its members' collective bargaining rights; (2) it
4 failed to acknowledge the existence of the LAPPL's pending lawsuit challenging the
5 financial disclosure program; (3) it provided no protections with respect to DOJ's
6 access to confidential peace officer personnel information; (4) it refrained from
7 requiring the immediate installation of video cameras in all divisions. The LAPPL
8 therefore sought modification of the Transition Agreement but agreed with the thrust
9 of the motion seeking termination of the Decree.

10 The Court conducted a hearing on the motion at which time all Parties and
11 Community Intervenors were permitted to speak. At the conclusion of the hearing the
12 Court expressed concern over a number of issues including: (1) the issues raised by the
13 LAPPL regarding its rights under the Transition Agreement; (2) the status of the
14 LAPPL and Community Intervenors under the terms of the Transition Agreement; (3)
15 the meaning of "substantial compliance" as that term is used in the Decree and the
16 minimal discussion of that concept in the Parties' motion; and (4) the legal authority of
17 the Court to extend, terminate, or modify the Decree under the circumstances presented
18 in this case. Because the Court was not satisfied that these issues had been adequately
19 addressed, it ordered further briefing.

20 **C. THE REVISED TRANSITION AGREEMENT AND FURTHER BRIEFING**

21 The Court has now received additional briefing from the City and DOJ who
22 have submitted a Revised Transition Agreement and additional points and authorities
23 in support of their motion. The Revised Transition Agreement addresses the
24 administrative/procedural issues raised by the Court and the various intervenors in the
25 following respects:

- 26 (1) The revised agreement expressly provides that the Court retains jurisdiction
27 over the lawsuit, including implementation of the terms and conditions of the
28 agreement;

- 1 (2) The revised agreement expressly recognizes and acknowledges that it does
- 2 not impair any collective bargaining rights of any LAPD bargaining unit;
- 3 (3) The revised agreement recognizes the ongoing role and the respective rights
- 4 of the LAPPL and Community Intervenors as intervenors in this lawsuit;
- 5 (4) The revised agreement provides that copies of the reviews required under its
- 6 terms will be provided to the Court and to the Monitor;
- 7 (5) The revised agreement provides for Mr. Cherkasky's ongoing role as a
- 8 consultant to the Parties and LAPD, with the same degree of access he had as
- 9 the Decree's Monitor, during the transition period and acknowledges that he
- 10 may make his own recommendations to any of the participants in this litigation
- 11 as he sees fit;
- 12 (6) The revised agreement expressly recognizes that disputes regarding its
- 13 terms, conditions, implementation, and the like will be resolved by the Court
- 14 with reference to relevant provisions of the Decree and that such resolution will
- 15 be consistent with the relevant portions of the Decree; and
- 16 (7) The revised agreement provides for full access to all documents reviewed by
- 17 the OIG and further provides that such materials shall be kept confidential.

18 The Revised Transition Agreement identifies the same three substantive areas covered
19 by the initial agreement – TEAMS II, biased policing, and financial disclosure – and
20 establishes a review procedure under which the OIG conducts reviews and makes
21 reports.

22 In addition, the Parties submitted a supplemental joint memorandum addressing
23 the propriety of terminating the Decree and observe that the Decree, by its own terms
24 in Paragraph 179, terminates automatically unless DOJ moves to extend it, and that
25 only upon a motion by DOJ does the issue of “substantial compliance” come into play.
26 In their view, Community Intervenors, who are the only participants now objecting to
27 the Revised Transition Agreement, simply overlook this aspect of Paragraph 179.
28 Even so, the Parties contend that the City has substantially complied with the Decree

1 and that substituting the Revised Transition Agreement is within the equitable powers
2 of the Court, is consistent with the initial objectives of the Decree to promote
3 “effective and respectful policing” under the United States Constitution, and serves the
4 interests of the parties and the public. The Parties find support for their position in the
5 language of the Decree itself, which contemplates termination unless DOJ moves for
6 an extension, and in a number of recent decisions by the Supreme Court and the federal
7 courts of appeals. E.g., Frew, 540 U.S. at 441-42; Rufo v. Inmates of Suffolk County
8 Jail, 502 U.S. 367, 391-92 (1992); Bd. of Educ. of Oklahoma City Pub. Schools v.
9 McDowell, 498 U.S. 237, 248 (1991); MTA, 564 F.3d at 1123; Shakman v. City of
10 Chicago, 426 F.3d 925, 934-35 (7th Cir. 2005); Thompson v. U.S. Dep’t of Hous. and
11 Urban Dev., 404 F.3d 821, 834 (4th Cir. 2005).

12 Community Intervenors continue to oppose the motion. They contend that the
13 City has not met its burden of showing that, for a two year period, it has “substantially
14 complied with *each of the provisions* of the Agreement.” (Decree ¶ 179 (emphasis
15 added).) For that reason, they argue that the City has failed to meet the standard to
16 which it agreed eight years ago and has not shown any legal authority for permitting
17 the Court to ignore that standard. Community Intervenors agree only that a transition
18 of responsibility from the Monitor to the OIG is appropriate, but assert that the
19 Monitor should remain involved as something more than a pro bono consultant to the
20 Court. Moreover, they contend that the authorities cited by the Parties, notably MTA,
21 are readily distinguishable and that the Parties have not established that Rufo’s
22 requirements for modification have been met.

23 III.

24 DISCUSSION

25 A. THE LANGUAGE OF PARAGRAPH 179

26 Because the source of the Court’s authority over this matter originated in the
27 agreement of the Parties, see Local No. 93, Int’l Ass’n of Firefighters, AFL-CIO
28 C.L.C. v. City of Cleveland, 478 U.S. 501, 522 (1986) (quoting United States v.

1 Armour & Co., 402 U.S. 673, 681-82 (1971)), the Court begins its discussion with the
2 language of Paragraph 179 of the Decree. That Paragraph reads:

3 The Court shall retain jurisdiction of this action for all purposes during
4 the term of this Agreement. The Agreement shall terminate five years
5 from the effective date without further action of the Court unless DOJ
6 makes a motion to extend the term of the Agreement, which motion shall
7 extend the term of the Agreement until the resolution of such motion.
8 Such motion shall be made within 45 days prior to the expiration of the
9 term of the Agreement. If the City contests the motion, the Court shall
10 hold a hearing at which both parties may present evidence to the Court
11 before ruling on the DOJ's motion. At the hearing, the burden shall be on
12 the City to demonstrate that it has substantially complied with each of the
13 provisions of the Agreement and maintained substantial compliance for
14 at least two years. For the purposes of this paragraph, "substantial
15 compliance" means there has been performance of the material terms of
16 this Agreement. Materiality shall be determined by reference to the
17 overall objectives of this Agreement. Noncompliance with mere
18 technicalities, or temporary failure to comply during a period of
19 otherwise sustained compliance, will not constitute failure to maintain
20 substantial compliance. At the same time, temporary compliance during a
21 period of otherwise sustained noncompliance shall not constitute
22 substantial compliance. If the Court finds that the City has not
23 maintained substantial compliance for at least two years, the Court shall
24 extend the term of this Agreement until such time as the City has been in
25 substantial compliance with this Agreement for a period of two years
26 including that period of time that the City had been in compliance prior
27 to DOJ's motion.

16 Although Community Intervenors insist that the Decree "means what it says," they
17 ignore the paragraph's first two sentences which provide for automatic termination
18 unless DOJ moves to extend the agreement. They also ignore the language of the
19 paragraph that provides that the City must show "substantial compliance" only in the
20 event that DOJ seeks to extend the Decree. They offer no authority for the proposition
21 that the Court may ignore these requirements of Paragraph 179 where both parties
22 agree to the termination.²

24 ²Community Intervenors suggest that they have sought an extension of the Decree by their filing and that,
25 in these circumstances they should be treated as "an original party." League of United Latin Am. Citizens
26 v. Wilson, 131 F.3d 1297, 1304 (9th Cir. 1997) (citing Wright, Miller & Kane, 7C Federal Practice and
27 Procedure 3d § 1920 (1986)). There is no doubt that controlling case law establishes an intervenor's
28 procedural rights in the litigation, and perhaps even allows the intervenor to pursue its own claims, see,
e.g., Conseco v. Wells Fargo Fin. Leasing, Inc., 204 F. Supp. 2d 1186, 1194 (S.D. Iowa 2002), but the
Court sees no way to read that language to make an intervenor a party to a contract that it did not
negotiate, sign, or perform. Since Community Intervenors are not parties to the agreement, they may
enforce its provisions only if deemed third party beneficiaries. However, the Decree plainly states that

1 Undeterred, Community Intervenors address the motion requirement by
2 asserting that “[t]his Court rejected that argument in extending the Consent Decree in
3 2006, despite the absence of a motion by DOJ.” (Resp. to Joint Supp. Mem. at 4.)
4 This contention is not accurate. In 2006, in response to an order to show cause issued
5 by this Court, the Parties jointly moved to extend the decree for a period of two years
6 (see Docket Nos. 309, 310), which required the Court to resolve only the issue of the
7 length of the proposed extension. The Parties asked for two years; the Court
8 determined that three years was more appropriate given the status of the
9 implementation of a number of important provisions including TEAMS II.
10 Nevertheless, the Court was spared the task of taking on the question of whether an
11 extension could have been ordered had DOJ simply remained mute in 2006. That issue
12 has never been squarely addressed by the Court.

13 Moreover, Community Intervenors’ argument that the Decree can be extended
14 even in the absence of a motion by DOJ runs contrary to their position regarding the
15 interpretation of the remainder of Paragraph 179. They argue that the Court must
16 strictly construe the definition of “substantial compliance,” which they contend is
17 essential if the Decree “is to mean what it says.” (Resp. to Joint. Supp. Mem. at 2.)
18 But if the Decree “means what it says,” then it can be extended only on motion by
19 DOJ, as set forth in the very same paragraph containing the definition of “substantial
20 compliance.” Moreover, if Paragraph 179 means what it says, the City becomes
21 obligated to show substantial compliance only where DOJ moves to extend the Decree.
22 Thus, Community Intervenors favor a flexible approach to construing the language that
23 describes when and under what circumstances the Court can even consider extending
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25
26 there are no intended third party beneficiaries contemplated by the agreement. Well established case law
27 therefore holds that they may not seek to enforce provisions of the Decree. See Blue Chip Stamps v.
28 Manor Drug Store, 421 U.S. 723, 750 (1975); Klamath Water Users Protective Ass’n v. Patterson, 204
F.3d 1206, 1210-11 (9th Cir. 1999); Hook v. Ariz. Dep’t of Corr., 972 F.2d 1012, 1015 (9th Cir. 1992).
In short, while the Court considers the arguments made by Community Intervenors regarding the Decree,
they may not usurp the authority of the United States under the Decree.

1 the Decree, but insist on a plain meaning of the words approach to the test for whether
2 the Decree should be terminated or extended. In short, the Community Intervenors put
3 forth an argument that would have the Court, in the exercise of its equity powers,
4 ignore portions of Paragraph 179 and strictly construe others.

5 The Court is not persuaded that different standards apply to different sentences
6 contained in Paragraph 179. Rather, the Court reaches the hardly noteworthy
7 conclusion that it should attempt to construe the provisions of Paragraph 179 as a
8 whole and not by ignoring some elements of the Paragraph and strictly construing
9 others. United States v. Asarco, Inc., 430 F.3d 972, 980 (9th Cir. 2005) (“A consent
10 decree must be discerned within its four corners, extrinsic evidence being relevant only
11 to resolve ambiguity in the decree.”) In short, Community Intervenors cannot succeed
12 by arguing that Paragraph 179 should be strictly construed because such a construction
13 would require automatic termination of the Decree. And since that mechanistic
14 approach is not consistent with either the Court’s equitable powers or with the Parties
15 proposal to modify the Decree, the Court must look elsewhere for guidance.

16 **B. SUPREME COURT PRECEDENT**

17 The Supreme Court considered the proper standard governing motions to
18 modify consent decrees in Rufo, 502 U.S. 367. There, a district court entered a consent
19 decree in the early 1970s in a case concerning jail overcrowding in Suffolk County,
20 Massachusetts. For two decades the litigants sparred over details regarding the
21 planning and construction of a new jail facility with the initial objective of eliminating
22 double bunking of inmates awaiting trial. When population changes rendered a
23 planned facility insufficient to meet that objective, local officials, almost two decades
24 after the suit had been filed, sought a modification of the decree to eliminate the
25 requirement that all inmates be housed in single cells. The issue was complicated by
26 the fact that an intervening change in the law clarified that double bunking was not
27 necessarily unconstitutional. Nevertheless, the district court rejected the motion,
28 holding that the modification was unnecessary to correct any “grievous wrong”

1 resulting from a change in conditions; the First Circuit affirmed. The Supreme Court
2 granted review to determine whether the proper standard had been applied to the
3 resolution of the motion.

4 The Supreme Court reversed. Rejecting the more rigid “grievous wrong” test in
5 favor of a more flexible standard, the Court held that a party seeking modification
6 would need to show a significant change in circumstances and that the modification
7 was suitably tailored to those circumstances. Rufo, 502 U.S. at 393. Moreover, the
8 Supreme Court noted the importance of flexibility in assessing such a motion.

9 The upsurge in institutional reform litigation since Brown v. Board of
10 Education, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954), has made
11 the ability of a district court to modify a decree in response to changed
12 circumstances all the more important. Because such decrees often remain
in place for extended periods of time, the likelihood of significant
changes occurring during the life of the decree is increased.

13 The experience of the District Courts of Appeals in implementing
14 and modifying such decrees has demonstrated that a flexible approach is
15 often essential to achieving the goals of reform litigation. The Courts of
16 Appeals have also observed that the public interest is a particularly
significant reason for applying a flexible modification standard in
institutional reform litigation because such decrees reach beyond the
parties involved directly in the suit and impact on the public’s right to the
sound and efficient operation of its institutions.

17 502 U.S. at 380-81 (citations, footnote, and internal quotation marks omitted). Thus,
18 although the Supreme Court did not address the merits of the proposed modification, it
19 established a substantially more liberal standard to be applied by the district court in
20 determining whether or not modification was appropriate under the circumstances
21 presented to the court.

22 More recently, in Frew, 540 U.S. 431, the Supreme Court reiterated the
23 rationale underlying the Rufo decision. The Frew litigation centered around a consent
24 decree mandating the implementation of certain practices and procedures in connection
25 with the State of Texas’s participation in the federally funded Medicaid program. In a
26 suit to enforce the decree, the principal issue before the Supreme Court was whether
27 the Eleventh Amendment barred enforcement of the terms of the decree. The Supreme
28

1 Court held that the decree was enforceable under Ex Parte Young, 209 U.S. 123
2 (1908), but acknowledged the importance of concerns raised by the state officials:

3 The state officials warn that enforcement of consent decrees can
4 undermine the sovereign interests and accountability of state
5 governments. Brief for Respondents 23-32. The attorneys general of 19
6 States assert similar arguments as amici curiae. Brief for Utah et al. as
7 Amici Curiae. The concerns they express are legitimate ones. If not
8 limited to reasonable and necessary implementations of federal law,
remedies outlined in consent decrees involving state officeholders may
improperly deprive future officials of their designated legislative and
executive powers. They may also lead to federal-court oversight of state
programs for long periods of time even absent an ongoing violation of
federal law.

9 Frew, 540 U.S. at 441. Citing Rufo, the Supreme Court further cautioned:

10 Rufo rejected the idea that the institutional concerns of government
11 officials were “only marginally relevant” when officials moved to amend
12 a consent decree, and noted that “principles of federalism and simple
13 common sense require the [district] court to give significant weight” to
14 the views of government officials. 502 U.S. at 392 n.14, 112 S. Ct. 748.
15 When a suit under Ex parte Young requires a detailed order to ensure
16 compliance with a decree for prospective relief, and the decree in effect
17 mandates the State, through its named officials, to administer a
18 significant federal program, principles of federalism require that state
19 officials with front-line responsibility for administering the program be
20 given latitude and substantial discretion.

21 The federal court must exercise its equitable powers to ensure that
22 when the objects of the decree have been attained, responsibility for
23 discharging the State's obligations is returned promptly to the State and
24 its officials. As public servants, the officials of the State must be
25 presumed to have a high degree of competence in deciding how best to
26 discharge their governmental responsibilities. A State, in the ordinary
27 course, depends upon successor officials, both appointed and elected, to
28 bring new insights and solutions to problems of allocating revenues and
resources. The basic obligations of federal law may remain the same, but
the precise manner of their discharge may not. If the State establishes
reason to modify the decree, the court should make the necessary
changes; where it has not done so, however, the decree should be
enforced according to its terms.

23 Id. at 441-42.

24 This concern was reiterated even more strongly in Horne, 129 S. Ct. 2579,
25 decided in just the past few weeks. In that case, which involved a decree related to
26 violations of the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f), the
27 affected school districts sought relief from the decree which was denied by the district
28 court in an order affirmed by the Ninth Circuit. The Supreme Court reversed because,

1 among other things, it concluded that both lower courts misunderstood “the nature of
2 the inquiry that is required when parties such as petitioners seek relief under Rule
3 60(b)(5).” Horne, 129 S. Ct. at 2588. Citing Rufo, the Supreme Court explained the
4 importance of flexibility in dealing with decrees in institutional reform litigation
5 because the decrees frequently endure for years and “raise sensitive federalism
6 concerns.” Id. The Court observed, “But in recognition of the features of institutional
7 reform decrees, we have held that courts must take a ‘flexible approach’ to Rule
8 60(b)(5) motions addressing such decrees. A flexible approach allows courts to ensure
9 that responsibility for discharging the State’s obligations is returned promptly to the
10 State and its officials when the circumstances warrant.” Id. at 2594–95 (citations and
11 internal quotation marks omitted). The Court therefore concluded:

12 The Court of Appeals did not engage in the Rule 60(b)(5) analysis just
13 described. Rather than applying a flexible standard that seeks to return
14 control to state and local officials as soon as a violation of federal law
15 has been remedied, the Court of Appeals used a heightened standard that
16 paid insufficient attention to federalism concerns. And rather than
17 inquiring broadly into whether changed conditions in Nogales provided
18 evidence of an ELL program that complied with the EEOA, the Court of
19 Appeals concerned itself only with determining whether increased ELL
20 funding complied with the original declaratory judgment order. The court
21 erred on both counts.

22 Id. at 2595.

23 Shortly before the Supreme Court issued its decision in Horne, the Ninth Circuit
24 reached a similar result in MTA, a consent decree case in which the Ninth Circuit
25 applied a flexible standard in determining that a consent decree need not be extended
26 even where defendant was not in complete compliance with all terms of the decree.

27 **C. THE MTA DECISION**

28 In the Ninth Circuit’s very recent MTA decision, the court reviewed a decision
by the district court denying a motion brought by plaintiffs to extend a consent decree
that imposed on the MTA the obligation of implementing a detailed plan to improve
bus service. Although the MTA had not met all of the goals and objectives of the
decree, the district court concluded that the decree did not mandate “perfection” and

1 that the MTA had substantially complied with the terms and conditions of the decree.
2 MTA, 564 F.3d at 1119. Accordingly, the district court denied the plaintiffs' motion to
3 extend the decree.

4 The Ninth Circuit affirmed. On review, the Ninth Circuit noted that “[b]ecause
5 the decree contains an express expiration date for the court’s retention of jurisdiction,
6 any change to that date entails a modification of the decree.” Id. at 1120. Citing Rufo
7 and provisions of the decree, the circuit noted that the requested extension would be
8 warranted only if: (1) plaintiffs demonstrated a significant and unanticipated change in
9 fact or law that made compliance more onerous, unworkable or detrimental to the
10 public interest; and (2) the proposed extension was suitably tailored to resolve the
11 problems arising because of the change. Id. Applying this test, the court concluded
12 that a failure to achieve substantial compliance would be a circumstance that would
13 justify an extension, but that the trial court had correctly concluded that MTA had
14 substantially complied with its obligations under the decree. Id. at 1121. The circuit
15 gave great deference to the district court because, with its decade of knowledge
16 concerning the operation of the bus system, “[it] was uniquely positioned to determine
17 whether there had been substantial compliance.” Id.

18 Community Intervenors suggest that differences between the wording of the
19 MTA decree and the Decree under consideration by this Court render the MTA
20 decision inapposite. The Court disagrees. It is significant for present purposes that
21 plaintiffs in MTA presented evidence that the MTA had not met the standard for
22 reducing bus overcrowding established in the decree itself. The circuit conceded that
23 point, noting that plaintiffs based their claim of noncompliance “on the standard set
24 forth in the decree for identifying instances of violations of the load factor targets” and
25 that the compliance standard was “written into the decree and affirmed by this court in
26 Labor/Community, 263 F.3d at 1048-49.” Id. at 1122. In short, the circuit agreed with
27 plaintiffs on that point. Nevertheless, the circuit observed that the “standard measures
28 only strict compliance with the load factor targets – not compliance with the decree

1 overall – and does so in an imprecise manner.” Id. Noting that the MTA conceded
2 that it was not in full compliance with the decree, the circuit nevertheless found that
3 plaintiff’s focus on the MTA’s specific shortcomings was “not particularly helpful”
4 and failed “to accurately capture the extent to which MTA did meet the targets during
5 the relevant time periods.” Id. The circuit concluded:

6 If the question here were simply whether MTA had achieved full
7 compliance with the decree, we would use BRU’s proposed standard. But
8 the question is whether there was substantial compliance, a less precise
9 standard that cannot be satisfied by reference to one particular figure,
10 while ignoring alternative information. Our analysis requires we do more
11 than simply count the number of technical deviations from the decree.
12 Instead, we must determine, using a holistic view of all the available
13 information, whether MTA’s compliance with the Decree overall was
14 substantial, notwithstanding some minimal level of noncompliance.

15 Id. The circuit ended its discussion by concluding that plaintiffs failed to demonstrate
16 that the district court abused its discretion in finding that the MTA substantially
17 complied with the requirements of the consent decree. Id., at 1123.

18 MTA is notable for several reasons. First, unlike the situation confronting this
19 Court, the litigants were in complete disagreement over whether the decree should be
20 terminated or extended and hotly contested that issue in both the district and appellate
21 courts. Here the institutional plaintiff, represented by DOJ, agrees that the Decree
22 should be terminated in favor of the Revised Transition Agreement. Second, because
23 of the procedural posture of the MTA dispute, the district court’s ruling resulted in the
24 complete termination of the district court’s involvement in the effort to reform the
25 operation of the MTA. In contrast, the Parties here agree to a continued role for the
26 United States and the Court in the reform process. Third, as the extended discussion
27 above indicates, the circuit applied a “holistic” approach to the question of “substantial
28 compliance” and affirmed the district court even where the application of a
contractually agreed standard showed that MTA had fallen short of meeting the
decree’s load factor standard, which plaintiffs persuasively argued was an important
part of the decree. Id., at 1122-23. The circuit dealt with this by asserting that the
standard failed to present an accurate picture and that the district court properly

1 considered “alternative information.” *Id.*, at 1122. In that regard, the circuit approved
2 the district court’s consideration of evidence indicating that the contractually agreed
3 standard was too narrow, and emphasized that “substantial compliance” was not to be
4 measured by counting up technical deviations from the terms of the decree but rather
5 through a “holistic view of all available information.” *Id.* In these words, the case
6 teaches that decrees should be viewed flexibly with an eye to the overall objective to
7 be attained by the litigation.

8 Finally, the circuit, reiterating the strongly held view of the United States
9 Supreme Court regarding federal court intervention in local government, articulated the
10 public policy behind such an approach:

11 Our decision is consistent with the principle that federal court
12 intervention in state institutions is a temporary measure and may extend
13 no longer than necessary to cure constitutional violations. In this case, as
14 the district court found, perhaps every last wish and hope of the decree
15 was not achieved, but the decree accomplished its essential purposes and
the situation improved greatly. These improvements strongly inform our
assessment that the district court was within its discretion in holding that
it no longer needed to oversee the running of the Los Angeles County
bus system.

16 *Id.* at 1123 (citations omitted). *MTA* therefore stands for the proposition that federal
17 consent decrees directed at institutional reform should be flexibly construed in a
18 manner consistent with the overall objectives sought to be achieved, and should be
19 mindful of the importance of insuring that a federal court’s intervention in local
20 institutions extends only so long as necessary to achieve those overall objectives.

21 **D. APPLICATION**

22 *1. The Position of the Parties and the Monitor*

23 This case is noteworthy because the situation confronting this Court is quite
24 different than the situations presented in most of the cases cited by the Parties. In those
25 cases, one of the parties to the litigation sought termination or modification of a decree
26 while one of its adversaries opposed the request. *E.g.*, *MTA*, 564 F.3d at 1116–17;
27 *Rufo*, 502 U.S. at 384. And in many of them, the party seeking modification had
28 spectacularly failed to comply with the most fundamental aspects of the decree. *E.g.*,

1 Rufo, 502 U.S. at 374-77 (proposed new jail facility not constructed after two
2 decades); Thompson, 404 F.3d at 834 (near total failure of defendants to comply with
3 decree mandates warranted district court’s denial of motion to terminate decree). Here
4 DOJ itself joins in the request and strongly urges the Court to approve the proposed
5 modification largely because of the Monitor’s conclusion in his Final Report “that the
6 LAPD has substantially complied with the requirements of the Consent Decree.” Thus,
7 unlike those cases where the parties are in disagreement over the satisfaction of the
8 terms of the Decree, the Parties in the present case and the Court’s Independent
9 Monitor all concur that LAPD is in substantial compliance with the Decree.³

10 The Court accepts that determination and adopts and incorporates by reference
11 the Monitor’s Final Report. As noted, the Monitor, who has been intimately involved
12 in the implementation of the Decree for the past eight years, concludes that the LAPD
13 has substantially complied with the Decree and notes:

14 We believe the changes institutionalized during the past eight years have
15 made the LAPD better: at fighting crime, at reaching out to the
16 community, in training its officers, in its use of force, in internal and
external oversight, and in effectively and objectively evaluating each of
the sworn members of LAPD.

17 (Final Report at 2.)

18 The Monitor’s report and conclusion is consistent with MTA’s direction that the
19 Court use “a holistic view of all the available information” to assess whether overall
20 compliance was substantial even if there are areas of noncompliance. 564 F.3d at
21 1122. A review of the Final Report demonstrates that the Monitors’ conclusion is

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24 ³Given the position of the Parties and the Community Intervenor, there is some ambiguity as to whether
25 the present proceedings should be characterized as a motion by the Parties to terminate the Decree, a
26 motion by the Parties to modify the Decree, or a motion by Community Intervenors to modify the Decree
27 (since the Parties ostensibly ask that it be terminated). Although, as stated in the text, the Court views the
28 proceeding as a motion by the Parties to modify the Decree, in the end the characterization does not
control the outcome. Because the Court concludes that the City is in substantial compliance with the
Decree within the meaning of Rufo, Frew and MTA, the Parties have persuaded the Court that
modification of the Decree is appropriate and Community Intervenors have failed to meet any burden that
they may have had of showing “changed circumstances” (failure to substantially comply) warranting
modification, i.e., extension, of the Decree.

1 based on the Monitor's intimate familiarity with the work done by LAPD over the past
2 eight years and his assessment of compliance with the numerous provision of the
3 Decree, which, as noted, contains 187 numbered paragraphs mandating the
4 implementation of a broad range of reforms. Among many other things, the Final
5 Report notes important structural changes within the LAPD including the creation of
6 the Audit Division, the establishment of the Ethics Enforcement Section within the
7 Internal Affairs Group, and the formation of the Critical Incident Investigation
8 Division.⁴ To insure the Audit Division's effectiveness, the Police Commission
9 approved an Audit Charter that officially adopted the audit standards promulgated by
10 the Comptroller General of the United States. Moreover, the Monitor notes the
11 enhanced role of the Police Commission and the OIG in providing civilian oversight of
12 the LAPD pursuant to the City Charter. Accordingly, the Monitor observed, "the
13 LAPD has become the national and international policing standard for activities that
14 range from audits to handling of the mentally ill to many aspects of training to risk
15 assessment of police officers and more." Report, at 2. Thus, although the Monitor
16 indicates that not every goal and objective of the Decree has been met, and not "every
17 last wish and hope" achieved, "the decree accomplished its essential purposes and the
18 situation improved greatly." MTA, 564 F.3d at 1123.

19 ***2. Community Intervenors' Objection***

20 Because the Monitor concedes that not every requirement of every material term
21 of the Decree has been satisfied, Community Intervenors assert that the Decree must be
22 extended. As noted, Community Intervenors point to Paragraph 179 of the Decree,
23 which provides that, where a motion to extend has been made, the City bears the
24 burden of establishing "substantial compliance" which the Decree defines as
25 compliance "with each of the provisions of the Agreement and maintained substantial
26 compliance for at least two years." Thus, as noted above, Community Intervenors

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28 ⁴Other important structural changes have occurred outside the LAPD including the City Council's creation of the Risk Management Bureau.

1 assert that “substantial compliance” as defined by the Decree has not been met and that
2 motion cannot be granted. The position of Community Intervenors suffers from a
3 number of defects.

4 First, it is not entirely clear how the “substantial compliance” provision would
5 be applied even where DOJ moved to extend the Decree. For example, the Decree
6 does not specify whether DOJ could put the City to its burden merely by filing a one
7 page motion to extend and thereby shift the burden to the City to show compliance
8 with each and every term of the Decree, or whether the DOJ would be obligated to
9 identify the specific areas where it contended the City fell short of substantial
10 compliance. In the latter situation, which seems a more plausible interpretation of
11 DOJ’s obligation, the “each of the provisions” language might reasonably be
12 interpreted to mean each of the provisions placed in issue by the motion to extend.
13 Otherwise DOJ could, if it so chose, potentially extend the Decree indefinitely even if
14 LAPD were in “substantial compliance” as that term is more commonly understood.
15 Such an interpretation of the Decree would be entirely at odds with the principle
16 enunciated in Horne, Frew, Rufo, and MTA, among others, that federal intervention in
17 the affairs of state and local governments should be of limited duration. In short, to
18 construe the “each provision” language as suggested by Community Intervenors would
19 inject a degree of rigidity into the agreement that consent decree jurisprudence suggests
20 is undesirable.

21 Second, unlike the decree in MTA which contained its own metric for
22 determining the degree of overcrowding on bus routes, the Decree here, though it
23 speaks of substantial compliance, does not itself contain a metric for determining when
24 substantial compliance with any particular term has been met. Rather, the Monitor
25 undertook a review of the terms of the Decree and created measurement tools to assess
26 compliance. Those tools have never been the subject of litigation nor have they been
27 incorporated in any order of this Court. While those tools are extremely valuable and
28 provide performance measures to assessing progress, “substantial compliance” is a

1 flexible concept that entails an assessment that goes beyond individual performance
2 measures. Thus, the Monitor could find, without being self-contradictory, that the
3 LAPD had substantially complied with the overall objectives of the Decree without
4 meeting the Monitor's metric for compliance with individual elements of the Decree.
5 MTA's discussion of the "holistic" nature of the substantial compliance determination
6 supports this view of the Monitor's conclusions.

7 Last, but surely not least in importance, Community Intervenors overlook the
8 continued commitment of the Parties to reform through the Revised Transition
9 Agreement. Community Intervenors simply ignore that the Parties have determined
10 that three particularly important areas will continue to be subjected to scrutiny, though
11 now by the Inspector General and not the Court's Monitor but still within the
12 jurisdiction of this Court. Such a modification, which allows for a transition of control
13 over the process to local officials, finds potent support in the rationale of Horne, Frew,
14 Rufo, and MTA. Thus, the Transition Agreement sets forth further work to be done to
15 insure proper use of TEAMS II, to implement policies and procedures to eliminate
16 biased policing, and to implement the financial disclosure provisions of the Decree.

17 ***3. The Revised Transition Agreement***

18 As set forth above in the discussion of the background of the pending motion,
19 the Court had expressed concern over a number of what it describes as administrative
20 and procedural issues governing the implementation of the Revised Transition
21 Agreement. As noted, those concerns have been addressed. The Court therefore turns
22 to the substantive provisions of the Revised Transition Agreement and offers the
23 following comments.

24 ***a. TEAMS II***

25 Continued implementation of TEAMS II, which is encompassed within the
26 Revised Transition Agreement, addresses a requirement that the Court views to be at
27 the core of the Decree. The United States initiated this lawsuit, which alleged a pattern
28 and practice of unconstitutional and unlawful conduct on the part of the LAPD,

1 because it concluded that those problems resulted from “the failure of the City
2 defendants to adopt and implement proper management practices and procedures.”
3 (Decree ¶ 2.) In the Court’s view, proper management practices and procedures could
4 not possibly be implemented in the absence of detailed, current information regarding
5 the conduct of individual members of the department. TEAMS II was meant to fill this
6 gap. Paragraph 39 of the Decree states:

7 The City has taken steps to develop, and shall establish a database
8 containing relevant information about its officers, supervisors, and
9 managers to promote professionalism and best policing practices and to
 identify and modify at-risk behavior (also known as an early warning
 system).

10 (Id. ¶ 39.) Paragraph 40 of the Decree further provides that not only the Chief of
11 Police, but also the Police Commission and the Inspector General “shall each have
12 equal and full access to TEAMS II, and may each use TEAMS II to its fullest
13 capabilities in performing their duties and responsibilities.” (Id. ¶ 40.)

14 In the Court’s view, this system would be fully operational but for an
15 unfortunate and ill-considered approach to the creation of the computerized database
16 on which the system is based. Nonetheless, those problems were finally resolved and
17 the system has been on line now for more than two years. At this point, the principal
18 role of the Inspector General is to assure that the system is being properly used by
19 LAPD management. The Court is confident that careful oversight over the next 18
20 months should be adequate to assure that the system is being properly utilized.

21 b. Financial Disclosure

22 Implementation of this aspect of the Decree was delayed by litigation which is
23 still active in this Court. But for that case, the Court is confident that this provision
24 would have been implemented much earlier. The Court sees no difficulty in assuring
25 that the requirements of disclosure, subject to the outcome of the pending lawsuit, can
26 readily be accomplished under the terms set forth in the Revised Transition Agreement.

27
28 c. Biased Policing

1 The area identified by Community Intervenors as a matter of particular concern
2 is biased policing. The Court fully agrees that this is a matter of great importance, and
3 one that the LAPD has given much attention over the past eight years. On this subject,
4 the Monitor noted:

5 While the Department has fallen short of substantial compliance with the
6 Consent Decree requirements in this area, this is clearly not reflective of a
7 lack of effort on the part of the City or the Department. The major
8 problem in determining compliance has rested with the difficulty, despite
9 best efforts, in determining whether biased policing is occurring and, if so,
10 to what extent, if any, it is systemic as opposed to isolated misconduct.

11 As described below, great strides have, in fact, been made by the
12 City and Department to address biased policing during the eight years
13 under the Decree. Training has been tremendously enhanced, and new
14 rules have been promulgated relating to the investigation of biased
15 policing complaints. In addition, the City and Department have
16 committed to the installation of video cameras in patrol vehicles. It
17 should be noted that there are significant indications that biased policing
18 that may have been occurring at the inception of the Consent Decree has
19 been significantly reduced. Specifically, opinions of minority
20 communities about the LAPD have steadily improved under the Consent
21 Decree. Likewise, the minority composition of the Department has
22 steadily increased.

23 (Final Report at 70.)

24 On this subject, Community Intervenors commissioned their own report, “A
25 Study of Racially Disparate Outcomes in the Los Angeles Police Department” prepared
26 by Professor Ian Ayres of Yale University. Community Intervenors offer conclusions
27 from that document, as well as information contained in the Harvard Kennedy School
28 Report, to contradict the Monitor’s assertions. However, the dispute between the
litigants on this issue helps to demonstrate the fundamental problem in evaluating
compliance or non-compliance in this area. Indeed, the Court, in its review of
materials regarding the issue of biased policing, has struggled to give meaning to the
data that Community Intervenors confidently assert proves that LAPD officers are in
fact engaged in biased policing. The Court is much less confident that such a
conclusion is warranted; the Court is certain only that continued work on this issue is
essential.

1 Therefore, it is notable that the issue of biased policing is one of the issues
2 singled out and included in the Revised Transition Agreement for further review and
3 continued oversight. The Court is quite confident that the Police Commission and OIG
4 will not allow this issue to go unattended under any circumstances. The Monitor's
5 Report specifically takes note of the Police Commission's sustained attention to the
6 issue of racial profiling and biased policing. (Id. at 72-73; see also Declaration in
7 Support of Status Report of Community Intervenors, Ex. A [Report of Executive
8 Director, Los Angeles Police Commission.]) Following an extensive discussion of racial
9 profiling in an August 2008 meeting, the Police Commission implemented several
10 recommendations, including the preparation of a detailed audit of racial profiling
11 complaints. (Id. at 73.) In addition, the Police Commission ordered LAPD to respond
12 to Professor Ayres' report, which occurred at the January 13, 2009 meeting of the
13 Commission, at which time further recommendations were made to address the broad
14 problem of biased policing. Moreover, the Court thinks it highly unlikely that the
15 political forces at work in the City of Los Angeles, including the presence and
16 involvement of the ACLU in community-police issues, will permit the issue of biased
17 policing to be ignored now or in the future. The Monitor agrees:

18 The Monitor commends the City and the LAPD for the significant steps
19 they have taken and the accomplishment they have achieved in their
20 efforts to comply with the Consent Decree requirements regarding biased
21 policing. With new policies and procedures in place, and the continued
22 oversight role of AD, the Police Commission and the OIG to ensure that
23 the policies and procedures are followed, deficiencies corrected and
24 recommendations implemented, the Monitor is confident that the
25 Department is on track to comply with these requirements.

26 (Id. at 75.)

27 Because this important area is included within the Revised Transition Agreement
28 and because it is being given extensive attention by LAPD Management, the Police
Commission and the Inspector General, the Court is satisfied that transition of
responsibility over these issues is appropriate.

1 **4. Other Deficiencies**

2 The Monitor noted other areas where the metric it established for assessing
3 substantial compliance had not been met. However, the Monitor noted that significant
4 progress was being made in most of these areas, including some that were more
5 technical in nature such as the maintenance of the Warrant Tracking Log. (*Id.* at 35.)
6 For example, the report states:

7 The Monitor recognized that although the Department did not meet the
8 requirements regarding supervisory oversight of the application/affidavit
9 and post-incident review, as indicated above, these compliance rates did
10 increase significantly in the 2008 audit from the previous year's audit.

11 Moreover, the Monitor noted that “although there were concerns in relation to the
12 documentation of the officers’ actions, [the Audit Division] concluded that the
13 Department was in 100% compliance with the articulation of the legal basis for the
14 warrants.” (*Id.* at n.41.) Likewise, with respect to arrests for violation of Penal Code
15 Section 148 (resisting or interfering with an officer), the Monitor found that LAPD was
16 in full compliance in 2006, but only in near compliance in 2007 and 2008 when the
17 compliance level, at 88%, was slightly below the >94% level to achieve substantial
18 compliance. The Court is confident that these kinds of matters can be addressed by the
19 Audit Division and Inspector General without the oversight of the Court.

20 However, there is one important area of concern that is not included in the
21 Revised Transition Agreement – a provision relating to further oversight of the Decree’s
22 provisions relating to the management of gang units. As Community Intervenors
23 correctly note, the present lawsuit was triggered when the Rampart Scandal – which
24 involved extreme lawlessness on the part of some LAPD gang units (operating as
25 CRASH at the time) – came to light. As the district judge assigned to preside over all
26 Rampart litigation, the Court is well aware of the astonishing level of misconduct in
27 which some officers engaged. It would be a serious mistake to forget that bit of history.
28 It is therefore troubling to note that the Final Report chronicles a number of ways in

1 which LAPD has struggled to comply with the Decree's requirements regarding the
2 management of gang units.

3 The Court has considered the question of scope of its authority in ruling on this
4 motion and, more specifically, whether its equitable powers permit it to grant the
5 motion with modification to the proposed Revised Transition Agreement. There is very
6 little doubt that the Court has discretion to take such action. In Frew, the Supreme
7 Court wrote, "Federal courts are not reduced to approving consent decrees and hoping
8 for compliance. Once entered, a consent decree may be enforced." 540 U.S. at 440.
9 By the same token, where circumstances have changed, the Court may exercise "the
10 traditional power of a court of equity to modify its decree in light of changed
11 circumstances." Id. at 441. Thus, in Horne, the Supreme Court observed that "[i]t goes
12 without saying that federal courts must vigilantly enforce federal law and must not
13 hesitate in awarding necessary relief." 129 S. Ct. at 2594. In short, as Frew, Rufo, and
14 Horne demonstrate, the Court's greater power – the enforcement of each and every
15 requirement of a consent decree – implies the lesser – the reduction in the obligations of
16 the Defendant to achieve equity. These cases clearly indicate that the Court has broad
17 discretion to exercise its power to modify a consent decree to include terms or
18 conditions that the Parties may not have included in their proposed modification.

19 With that in mind, the Court concludes that the Revised Transition Agreement
20 should be approved but with a modification to include further oversight and reporting
21 with respect to the Management of the Gang Units. Specifically, the Court's order
22 implementing the Transition Agreement will include a term requiring the OIG to
23 undertake the specific recommendations of the Monitor in the Final Report, and to
24 follow the same reporting protocols set forth in the Transition Agreement in respect to
25 biased policing.

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IV.

CONCLUSION

As set forth above, the motion of the Parties to terminate the Consent Decree and to approve the Transition Agreement is **GRANTED**. The circumstances confronting the Court have changed substantially. In 2001, when the Decree was entered, LAPD was a troubled department whose reputation had been severely damaged by a series of crises culminating in the Rampart Scandal. In 2008, as noted by the Monitor, "LAPD has become the national and international policing standard for activities that range from audits to handling of the mentally ill to many aspects of training to risk assessment of police officers and more." These changes support the modification proposed by the parties which is suitably tailored to address those changed circumstances. The Court's determination to permit the modification also carries out the mandate of the United States Supreme Court to return control of local institutions to local control as soon as reasonably possible consistent with the enforcement of federal law.

IT IS SO ORDERED.

Dated: July 17, 2009



Judge Gary Allen Feess
United States District Court