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6 Attorneys for CITY OF SAN JOSE

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

12 JUAN DIAZ, KEITH KEESLING,  
 CHRISTOPHER MURPHY, GARY  
 13 WEEKLEY, KAREN ALLEN and other  
 employees similarly situated,

14 Plaintiffs,

15 v.

17 CITY OF SAN JOSE,

18 Defendant.

Case Number: C07-06424 JW

**SECOND STIPULATION AND  
 [PROPOSED] ORDER EXTENDING  
 THE EARLY NEUTRAL EVALUATION  
 PERIOD**

20 **STIPULATION**

21 Pursuant to the stipulation of the parties, the Court, on April 23, 2008, ordered the  
 22 matter to Early Neutral Evaluation ("ENE") and appointed Thomas Gosselin, Esq. as the  
 23 evaluator. The parties engaged in an ENE session before Mr. Gosselin on July 21, 2008. At  
 24 the end of session, it was determined that it would be most efficient for the parties and the  
 25 court, and would more likely result in the informal resolution of this matter, were the parties to  
 26 engage in another ENE session with Mr. Gosselin after having a reasonable opportunity to  
 27 further study the scope of the claims and damages being asserted by Plaintiffs under the Fair  
 28 Labor Standards Act. The parties also agreed to attempt to address the related case, *Welch*

1 v. *City of San Jose* (Case No. C08-02132 JW) at the second ENE, as some of the legal  
2 issues overlap in the two cases. Combining the ENE of *Diaz v. City of San Jose* and *Welch*  
3 v. *City of San Jose* would further promote efficiency for the parties and the court.

4 The parties subsequently scheduled another joint ENE session with Mr. Gosselin for  
5 September 18, 2008. The parties have met and conferred, have notified Mr. Gosselin, and  
6 have determined that extending the date of for the parties to engage in the second ENE  
7 session would foster more effective discussions in order to allow the City sufficient time to  
8 analyze these complex issues as it relates to its entire Fire Department staff dating back two  
9 or three years.

10 As such, the parties, with Mr. Gosselin's support, stipulate through counsel that the  
11 ENE period will be extended up through and including October 31, 2008, by which time the  
12 parties will schedule another ENE session.

13 WYLIE, MCBRIDE, PLATTEN & RENNER

14  
15 Dated: September 12, 2008

By:           /s/ Christopher Platten            
CHRISTOPHER PLATTEN

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17 Attorney for Plaintiffs, JUAN DIAZ, KEITH  
KEESLING, CHRISTOPHER MURPHY,  
18 GARY WEEKLEY, and KAREN ALLEN

19 RICHARD DOYLE, City Attorney

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21 Dated: September 12, 2008

By:           /s/ Robert Fabela            
ROBERT FABELA  
Sr. Deputy City Attorney

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23 Attorney for Defendant CITY OF SAN JOSE

1 ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:

2 I attest that concurrence in the filing of this document by the signatories, Robert  
3 Fabela and Christopher Platten, has been obtained, and that a record of the concurrence  
4 shall be maintained at the Office of the City Attorney.

5 Date: September 12, 2008

By: /s/ Robert Fabela  
ROBERT FABELA

**[PROPOSED] ORDER**

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IT IS HEREBY ORDERED that the ENE period shall be extended up through and including October 31, 2008, by which time the parties will schedule another ENE session with the Evaluator regarding both the present case as well as *Welch v. City of San Jose* (Case No. C08-02132 JW).

Dated: September \_\_\_\_, 2008

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE