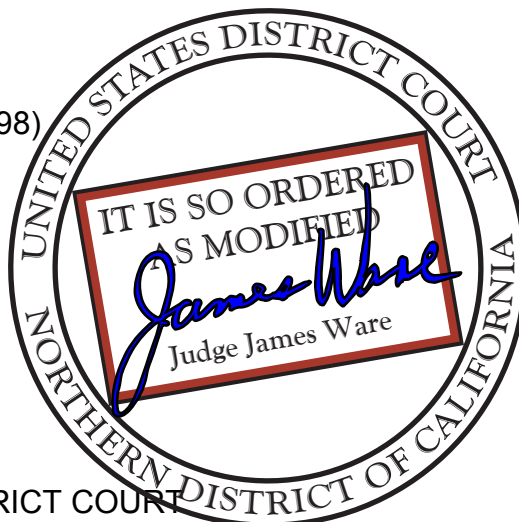


1 RICHARD DOYLE, City Attorney (#88625)
 GEORGE RIOS, Assistant City Attorney (#77908)
 2 ROBERT FABELA, Sr. Deputy City Attorney (#148098)
 Office of the City Attorney
 3 200 East Santa Clara Street
 San José, California 95113-1905
 4 Telephone Number: (408) 535-1900
 Facsimile Number: (408) 998-3131
 5 E-Mail Address: cao.main@sanjoseca.gov



6 Attorneys for CITY OF SAN JOSE

7
 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,

Case Number: C07-06424 JW

14 Plaintiffs,

13 **THIRD STIPULATION AND**
 [PROPOSED] ORDER EXTENDING
 14 **THE EARLY NEUTRAL EVALUATION**
 15 **PERIOD**

16 v.

17 CITY OF SAN JOSE,

18 Defendant.

19
 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. Due to the complexity of the issues and the number of employees
6 involved in the case (basically, every firefighter in the San Jose Fire Department), the City
7 requested, and the Plaintiffs and the evaluator agreed, that the subsequent ENE session
8 should be rescheduled to October 30, 2008.

9 In the meantime, the City has continued analyzing the issues and gauging its
10 exposure, a process which has taken longer than originally planned, and will be placing this
11 matter before the entire City Council in closed session in early November 2008. The City
12 believes that the second ENE session will be more effective after the City Council has an
13 opportunity to review this matter in closed session. As such, the parties and the evaluator
14 have agreed to continue the second ENE session to November 12, 2008 at 1:30 p.m.

15 Therefore, the parties, with Mr. Gosselin's support, stipulate through counsel that the
16 ENE period will be extended up through and including November 14, 2008, by which time the
17 parties will have completed the second ENE session.

18 WYLIE, MCBRIDE, PLATTEN & RENNER

19
20 Dated: October 28, 2008

By: /s/ Carol Koenig
CAROL KOENIG

21
22 Attorney for Plaintiffs, JUAN DIAZ, KEITH
23 KEESLING, CHRISTOPHER MURPHY,
24 GARY WEEKLEY, and KAREN ALLEN

25 RICHARD DOYLE, City Attorney

26 Dated: October 28, 2008

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

27
28 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 Carol Koenig, has been obtained, and that a record of the concurrence shall be
4 maintained at the Office of the City Attorney.

5 Date: October 28, 2008

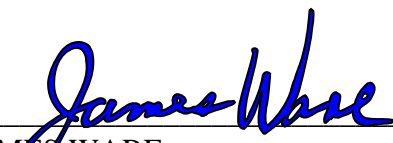
By: /s/ Robert Fabela
ROBERT FABELA

1 ~~PROPOSED~~ ORDER

2 IT IS HEREBY ORDERED that the ENE period shall be extended up through and
3 including November 14, 2008, by which time the parties will schedule another ENE session
4 with the Evaluator regarding both the present case as well as *Welch v. City of San Jose*
5 (Case No. C08-02132 JW).

6 In light of this Order, the Court continues the Case Management Conference currently set for
7 November 17, 2008 to **December 1, 2008 at 10 a.m.** On or before **November 21, 2008**, the parties
8 shall file a Joint Case Management Statement. The Statement shall include, among other things, an
9 update on the parties' ENE efforts and a discovery plan with a proposed date for the close of all
10 discovery.
11

12
13 Dated: October 30, 2008



JAMES WARE
United States District Judge