Diaz et al v. City of San Jose

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RICHARD DOYLE, City Attorney (#88625) 1 GEORGE RIOS, Assistant City Attorney (#77908) ROBERT FABELA, Sr. Deputy City Attorney (#148098) 2 Office of the City Attorney 200 East Santa Clara Street IT IS SO ORDERED 3 San José, California 95113-1905 Telephone Number: (408) 535-1900 4 Facsimile Number: (408) 998-3131 5 E-Mail Address: cao.main@sanjoseca.gov Judge James Ware 6 Attorneys for CITY OF SAN JOSE 7 8 UNITED STATES DISTRICT STRIC 9 NORTHERN DISTRICT OF CALIFORNIA 10 SAN JOSE DIVISION

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

Plaintiffs,

٧.

CITY OF SAN JOSE.

Defendant.

Case Number: C07-06424 JW Case Number: C08-02132 JW

JOINT STATUS STATEMENT AND ORDER CONTINUING STATUS CONFERENCE RE: SETTLEMENT

Pursuant to the Court's January 26, 2010 Order Continuing Status Conferences, the parties hereby submit the following Joint Status Statement. As this Court is aware, this is a Fair Labor and Standards Act case in which the Plaintiffs are asserting, based on several different theories, that Defendant City of San Jose has not paid Plaintiff firefighters overtime consistent with the Fair Labor and Standards Act for the last several years. The City denies these allegations.

As reported in the parties' last joint status conference, the parties believe they have reached a settlement agreement in principle, subject to proper authorization. The parties have continued to meet and confer regarding the details of the settlement terms, and believe

1	that most if not all major issues have been resolved. On Tuesday, March 30, the matter will
2	be heard by the City Council in closed session. The parties will then finalize a Settlement
3	Agreement, a process which has already begun and is nearly completed, and will agree to a
4	Stipulated Judgment, as mandated in FLSA cases. The parties also anticipate that this
5	matter will need to be posted on an open session City Council agenda for final approval,
6	pursuant to the City's "sunshine" rules.
7	In light of the current status of this case, the parties jointly request a 60 day
8	continuance of the Status Conference to allow them an opportunity to take the necessary
9	steps to have this matter finalized. Should a settlement be finalized prior to the continued
10	Status Conference, the parties ask that this matter be dismissed at that time and that the
11	Status Conference be taken off calendar.
12	Dated: March 29, 2010 RICHARD DOYLE, City Attorney
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14	By:/S/ROBERT FABELA
15	ROBERT FABELA Sr. Deputy City Attorney
16	Attorney for Defendant CITY OF SAN JOSE
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18	Dated: March 29, 2010 WYLIE, McBRIDE, PLATTEN & RENNER
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20	By: <u>/S/</u>
21	Attorneys for Plaintiffs JUAN DIAZ, KEITH
22	KEESLÍNG, CHRISTOPHER MURPHY, GARY WEEKLEY and KAREN ALLEN
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24	ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:
25	I attest that concurrence in the filing of this document by the signatories, Robert Fabela
26	and Carol Koenig, has been obtained, and that a record of the concurrence shall be
27	maintained at the Office of the City Attorney.
28	Date: March 29, 2010 By: /s/ Robert Fabela

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## \*\*\* ORDER \*\*\*

Although the Court had previously warned the parties regarding the timeliness of their filings, it appears that the parties have once again failed to adhere to the Court's Orders. The Court's January 26, 2010 Order required that the parties' Joint Statement be filed on or before March 26, 2010 (Docket Item No. 51); however, the parties did not file their Joint Statement until March 29, 2010. (Docket Item No. 52.)

Based on the representation that the City Council voted on the Settlement Agreement on March 30, 2010, the Court GRANTS a brief continuance to allow the parties to finalize their Settlement Agreement. The Court continues the Status Conference from April 5, 2010 to May 24, 2010 at 10 a.m. On or before May 14, 2010, the parties shall their Joint Statement or Stipulated Judgment for the Court's approval.

Failure to timely file the required statement may result in monetary sanctions for both parties.

Dated: March 31, 2010

JAMJES WARE

hited States District Judge