

1 Vanessa W. Vallarta, City Attorney #142404
 OFFICE OF THE CITY ATTORNEY
 2 200 Lincoln Avenue
 Salinas, CA 93901
 3 Telephone: (831) 758-7256
 Facsimile: (831) 758-7257
 4

Vincent P. Hurley #111215
 Amanda M. Cohen #243946
 LAW OFFICES OF VINCENT P. HURLEY
 A Professional Corporation
 38 Seascape Village
 Aptos, California 95003
 Telephone: (831) 661-4800
 Facsimile: (831) 661-4804

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9 Attorneys for Defendants
 CITY OF SALINAS, CITY OF SALINAS POLICE CHIEF DANIEL ORTEGA,
 10 POLICE OFFICER STEVEN MATTOCKS, and
 POLICE OFFICER ROBERT BALAORO
 11

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 15 MARIA IRMA DELA TORRE) DECEASED, THROUGH HER) 16 SUCCESSOR IN INTEREST, JOSE) MAXIMILIANO LICEA ABACA; MARIA) 17 DELA TORRE, individually; and JOSE) MAXIMILIANO LICEA ABACA,) 18 individually)) 19 Plaintiffs,)) 20 vs.)) 21) CITY OF SALINAS, a public entity, CITY) 22 OF SALINAS POLICE CHIEF DANIEL) ORTEGA in his individual and official) 23 capacities, POLICE OFFICER STEVEN) MATTOCKS, Individually, POLICE) 24 OFFICER ROBERT BALAORO,) Individually, and DOES 1 through 10,) 25 Jointly and Severally,)) 26 Defendants.)) 27) 28)	Case No: C09-00626 RMW STIPULATION AND [] ORDER DISMISSING SOME OF PLAINTIFFS' CLAIMS AND DISMISSING DEFENDANT DANIEL ORTEGA
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1 Attorneys for the parties wish to narrow the issues for Defendants' dispositive motions
2 and trial and, having met and conferred, stipulate as follows:

3 **STIPULATIONS REGARDING CLAIMS OF**
4 **PLAINTIFF MARIA DELA TORRE**

5 Defendants dispute whether or not Plaintiff Maria Dela Torre has standing to sue for any
6 cause of action based on the Fourth Amendment, while Plaintiff maintains that she may
7 personally pursue a claim for wrongful death based on a violation of Irma Dela Torre's rights
8 established in the Fourth Amendment. Defendants have agreed not to include in their dispositive
9 motion the issue of whether or not Maria Dela Torre has standing to assert a wrongful death
10 claim in her personal capacity based on a violation of Irma Dela Torre's Fourth Amendment
11 rights or other personal rights under federal or state law, and in their Motion for Summary
12 Judgment Defendants have not challenged Plaintiffs' standing under California Code of Civil
13 Procedure § 377.60 to bring wrongful death claims for violation of Irma Dela Torre's Fourth
14 Amendment rights or Irma Dela Torre's right to be free from common law torts including assault
15 and battery. Plaintiffs Maria Dela Torre and Jose Maximiano Licea Abarca do not claim that
16 they were deprived of their own personal Fourth Amendment rights or that they were personally
17 subjected to assault and battery, as all Fourth Amendment and assault and battery claims are
18 brought pursuant to California Code of Civil Procedure § 377.60 et seq. and/or § 377.20 et seq.

19 Plaintiff, Maria Dela Torre, by this stipulation, dismisses the following Counts of her
20 Complaint: **Count Two** -- 42 U.S.C. § 1983 – Against Defendants City of Salinas and Chief of
21 Police Daniel Ortega; **Count Three** -- Violation of Civil Code § 52.1 Against All Defendants
22 (without prejudice, subject to survival claim stipulation below); **Count Six**-- Violation of
23 California Civil Code § 51.7 Against All Defendants. Plaintiff Maria Dela Torre continues to
24 assert her claims against the City of Salinas based on *respondeat superior* liability for her state
25 law claims.

26 Plaintiff Maria Dela Torre, by this stipulation, dismisses Defendant Daniel Ortega from
27 this lawsuit, each side to bear her, his or its own costs and attorneys fees as they relate to Daniel
28 Ortega.

1 Plaintiff Maria Dela Torre, by this stipulation, dismisses without prejudice any survival
2 claim pursuant to California Code of Civil Procedure §§ 377.20, 377.30, and 377.32 as successor
3 in interest of Irma Dela Torre, because Maria Dela Torre agrees that Decedent’s husband,
4 Plaintiff Jose Maximiano Licea Abarca, appears to have a “superior right to commence the
5 action or proceeding” to bring survival claims as Successor in Interest at this time. This
6 dismissal of Maria Dela Torre’s survival claims is without prejudice to lawfully asserting such
7 claims if the Court determines or all parties agree that Plaintiff Jose Maximiano Licea Abarca
8 does not have standing to assert claims of Irma Dela Torre as her successor in interest or if his
9 survival claims are dismissed from this action without his agreement.

10 **STIPULATIONS REGARDING CLAIMS OF**
11 **PLAINTIFF JOSE MAXIMILIANO LICEA ABARCA**

12 Plaintiff Jose Maximiano Licea Abarca, individually and as successor in interest of Maria
13 Irma Dela Torre, by this stipulation, dismisses the following Counts of his Complaint: **Count**
14 **Two** -- 42 U.S.C. § 1983 -- Against Defendants City of Salinas and Chief of Police Daniel
15 Ortega; **Count Six** -- Violation of California Civil Code § 51.7 Against All Defendants. JOSE
16 MAXIMILIANO LICEA ABARCA, as an Individual dismisses his claim as to; **Count Three** --
17 Violation of Civil Code § 52.1 Against All Defendants; He continues to assert the survival claim
18 of Irma Dela Torre as her successor in interest. Jose Maximiano Licea Abarca continues to assert
19 claims against the City of Salinas based on *respondeat superior* liability for state tort claims.
20 Jose Maximiano Licea Abarca also dismisses individually **Count Seven** -- Violation of
21 California Civil Code § 51.7 Against Defendants Mattocks and Balaoro and the City of Salinas --
22 plead as liability to a bystander for violation of the California Constitution, but Licea Abarca
23 continues to pursue, in his individual capacity, a State tort “*Dillon*” claim for injury to a
24 bystander in his Fourth Count for Negligence.

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1 Plaintiff, Jose Maximiano Licea Abarca, by this stipulation, dismisses Defendant Daniel
2 Ortega from this lawsuit, each side to bear her, his or its own costs and attorneys fees as they
3 relate to Daniel Ortega.

4 The parties request that the Court so order.

5 Dated: August 17, 2010

6 LAW OFFICES OF VINCENT P. HURLEY

7
8 By: /s/ Vincent P. Hurley
VINCENT P. HURLEY
9 Attorneys for Defendants City of Salinas, et al.

10
11 Dated: August 16, 2010

12 CURD, GALINDO & SMITH, LLP

13
14 By: /s/ Alexis Galindo
ALEXIS GALINDO
15 Attorneys for Plaintiff Jose Maximiliano Licea
Abarca

16 Dated: August 11, 2010

17 HADDAD & SHERWIN

18
19 By: /s/ Michael J. Haddad
MICHAEL J. HADDAD
20 Attorneys for Plaintiff Maria Dela Torre

21 **ORDER**

22 Based on the stipulation of the parties:

23 IT IS ORDERED that Counts Two and Six of Plaintiffs' Complaint are dismissed, and
24 Plaintiffs' Complaint against Defendant Daniel Ortega is dismissed with prejudice with all
25 parties to bear their own costs and attorneys fees as to claims against Daniel Ortega.

26 IT IS FURTHER ORDERED that the wrongful death claims of Plaintiff Maria Dela
27 Torre, and Plaintiff Jose Maximiano Licea Abarca, individually for violation of Cal. Civil Code
28 § 52.1 in Count Three are dismissed with prejudice, and Plaintiff Maria Dela Torre's survival

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claim as a successor in interest is dismissed without prejudice. Count Three as pled by Plaintiff Jose Maximiano Licea Abarca as successor in interest to Maria Irma Dela Torre is not dismissed.

IT IS FURTHER ORDERED that the Civil Code Section 51.7 claims of Jose Maximiano Licea Abarca as successor in interest to Maria Irma Dela Torre and Jose Maximiano Licea Abarca, individually found in Count Seven are dismissed; however, the negligence State tort claims of both Jose Maximiano Licea Abarca as successor in interest to Maria Irma Dela Torre and Jose Maximiano Licea Abarca individually, found in Count Four and Seven are not dismissed.

IT IS FURTHER ORDERED that any claim of Plaintiff Maria Dela Torre as successor in interest of Irma Dela Torre is dismissed without prejudice.

Dated: 8/18/10 _____



Honorable Ronald M. Whyte
Judge of the United States District Court
Northern District of California