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 CITY OF LOMPOC and
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NOTE CHANGES MADE BY COURT

11 Attorneys for Plaintiffs
 RACHEL DELKENER, GAIL DENSMORE,
 12 MATHEW PAINE, TRISH WARFIELD &
 LEAH CHASE

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15

16 RACHEL DELKENER, GAIL DENSMORE,
 17 MATHEW PAINE, TRISH WARFIELD and
 LEAH CHASE,

Case No. CV13-02919 PA (AGRx)

Hon. Percy Anderson

18 Plaintiffs,

19
 20 CITY OF LOMPOC; LOMPOC POLICE
 DEPARTMENT; and DOES 1 THROUGH
 21 10, inclusive,

**ORDER REINSTATING ACTION
 AND APPROVING STIPULATED
 SETTLEMENT AGREEMENT**

Hearing Date: None set

22 Defendants.

Complaint Filed: April 25, 2013
 Trial Date: March 25, 2014

23
 24
 25 This matter is before the Court on the Parties' Joint *Ex Parte* Application to reinstate
 26 the action pursuant to Local Rule 41-3 and for judicial approval of the stipulated settlement
 27 agreement.

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1 The Court finds that:

- 2 1. The interests of justice and judicial economy allow the Court's reinstatement
3 of the action;
- 4 2. A bona fide dispute exists between the Parties as to whether Defendants failed
5 to properly pay Plaintiffs for all hours worked, in violation of the Fair Labor
6 Standards Act;
- 7 3. The Stipulated Settlement Agreement is a fair and reasonable compromise of
8 the Parties' bona fide dispute;
- 9 4. The Stipulated Settlement Agreement was negotiated at arm's length between
10 competent, able counsel, and no collusion existed in connection with the
11 Settlement Agreement;
- 12 5. The record is sufficiently developed and complete to have enabled Plaintiffs
13 and Defendants to evaluate and consider their positions.

14 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 15 1. That the action be reinstated pursuant to Local Rule 41-3;
- 16 2. That the Stipulated Settlement Agreement is hereby approved;
- 17 3. That the Stipulated Settlement Agreement shall be implemented in
18 accordance with its terms; and
- 19 4. That this Action and all claims asserted therein are hereby dismissed with
20 prejudice.

21 There being no just reason for delay, this Order shall be deemed final and the Clerk
22 of the Court is directed to enter this Order forthwith.

23 **IT IS SO ORDERED.**

24 Dated: March 4, 2014



Hon. Percy Anderson
United States District Judge

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

I. PARTIES

This Settlement Agreement and Release of Claims (the "Agreement") is entered into by and between Plaintiffs Rachel Delkener ("Delkener" or "Plaintiff"), Gail Densmore ("Densmore" or "Plaintiff"), Mathew Paine ("Paine" or "Plaintiff"), Trish Warfield ("Warfield" or "Plaintiff") and Leah Chase ("Chase" or "Plaintiff") (collectively, "Plaintiffs") and Defendant City of Lompoc ("City"), a general law city and municipal corporation, ("City"), collectively herein referred to herein as "Parties," to terminate and release fully and finally all disputes arising out of, or related to, the Action defined hereinafter.

II. RECITALS

A. WHEREAS, on April 25, 2013, Plaintiffs filed a complaint in the United States District Court, Central District of California, entitled *Rachel Delkener, Gail Densmore, Mathew Paine, Trish Warfield and Leah Chase* ("Delkener case" or "Action"), USDC Case No. CV13-02919 PA (AGRx); and

B. WHEREAS, through their Complaint, Plaintiffs allege that the City violated the Fair Labor Standards Act ("FLSA") by failing to pay them overtime wages for all time worked in excess of forty (40) hours per week and compensate them when they were required to stay on duty during their allotted thirty-four (34) minute meal period; and

C. WHEREAS, the Plaintiffs and Plaintiffs' counsel have fully investigated and evaluated the claims and potential claims against the City, including: (i) researching and drafting of the complaint, with the necessary review and analysis of the applicable law with respect to the claims and defenses available in the Action; (ii) reviewing and analyzing the City's responses to Plaintiffs' discovery requests; (iii) advocating for the rights of the Plaintiffs; and (iv) engaging in arms' length negotiations with Defense counsel, Counsel for Plaintiffs has concluded after such investigation of the facts, and after careful consideration of the circumstances of the Action, the applicable law, and the results - namely, among other terms, the provision of paid meal periods to all dispatchers commencing once the City Council has approved a resolution providing for paid meal periods and the payment of thirty-four (34) minutes of overtime wages to each Plaintiff for eighty-five percent (85%) of all shifts of more than five (5) hours duration each pay period the Plaintiff worked between April 24, 2011 and April 24, 2013, less all meal periods for which Plaintiffs were previously paid, and the payment of one half hour of overtime wages to each Plaintiff for every pay period during which they recorded an eleven-hour shift - that it would be in the best interests of the Plaintiffs to enter into this Agreement; and

D. WHEREAS, the City vigorously denies the allegations in the Action, has not conceded or admitted any liability to the Plaintiffs, and has asserted affirmative defenses as to all the claims asserted against it. The City also preserves and does not waive other objections, including without limitation whether the City's time records and other evidence as alleged by Plaintiffs are sufficient to allow a fact finder to draw inferences regarding whether meal breaks were missed or interrupted. The City further asserts that it has complied with all applicable provisions of any statutory or common law. The City further states that notwithstanding its good

faith belief that it is not liable for any of the claims asserted; and

E. WHEREAS, entering into this Agreement will allow the Plaintiffs to avoid the uncertainties and inevitable delay of litigation, particularly complex litigation such as this, and will assure benefits to the Plaintiffs; and

F. WHEREAS, as the Parties prepared for trial set for March 25, 2014, negotiations were ongoing, including an informal mediation session; and

G. WHEREAS, arm's length settlement negotiations have taken place between counsel for the Plaintiffs and counsel for the City, including numerous phone calls, electronic mail, U.S. mail, and a face-to-face mediation session on December 4, 2013; and

H. WHEREAS, this Agreement embodies all of the terms and conditions of the Settlement between the Parties, subject to the approval of the Court; and

I. WHEREAS, counsel for Plaintiffs considers the Settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Plaintiffs and unreservedly recommend same; and

J. WHEREAS, counsel for Plaintiffs have, among other things, considered the attendant risks inherent in continuing this Action including the uncertainty of recovery for unpaid meal periods where the City established a system to compensate employees, including Plaintiffs, for missed meal breaks and paid employees, including Plaintiffs, when they used that system, and at certain times Plaintiffs allegedly failed to use that system, the uncertainty of liquidated damages and pre-judgment interest, and the ability to obtain a certain recovery today as compared to the possibility of delayed recovery or no recovery at all; and

K. WHEREAS, counsel for Plaintiffs have, among other things, also considered the results achieved through this Settlement and have determined that in the exercise of their best judgment that this Settlement specifically falls within the range of recovery that this Court objectively should determine to be fair and reasonable; and

L. WHEREAS, continuing this Action against the City would entail a lengthy and expensive legal battle, involving complex legal and factual issues; and

M. WHEREAS, the City has asserted various defenses, and a jury trial would turn on questions of proof, many of which would be the subject of complicated expert testimony, particularly with regard to liability and damages, making the outcome of such trial uncertain for all Parties;

N. WHEREAS, the City has concluded, despite its position that it has not committed the wrongdoing alleged in the Action, that it is not liable for the claims asserted in the Action, that it will nevertheless enter into this Agreement to avoid the further expense, inconvenience, and burden of protracted litigation, and the distraction and diversion of its personnel and resources, and the risks inherent in uncertain, complex litigation;

O. NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the

undersigned that the Action be settled, compromised, and dismissed with prejudice as to the City, without costs or expenses as to the Plaintiffs or the City except as provided in this Agreement, subject to the approval of the Court, on the following terms and conditions. The entry of dismissal in this Action shall dismiss with prejudice all claims which were alleged in the Action by any of the Plaintiffs. The Parties agree to cooperate and take all steps necessary and appropriate to obtain final approval of this Settlement, to effectuate its terms, and to dismiss this Action with prejudice.

III. TERMS OF SETTLEMENT

A. Subject to the other terms and conditions of this Agreement, and subject to Court approval, the City agrees that the Settlement Amount shall consist of the following:

1. The payment of thirty-four (34) minutes of overtime wages to each Plaintiff for eighty-five percent (85%) of all shifts worked of more than five (5) hours duration each pay period that Plaintiff worked between April 24, 2011 and April 24, 2013, based on the Plaintiff's current hourly overtime rate of pay, less all previously paid meal periods and applicable local, state and federal taxes and other withholdings. A spreadsheet reflecting the amounts is attached as an exhibit to this Agreement;

2. The payment of one -half (0.5) hour of overtime wages to each Plaintiff for each pay period that Plaintiff worked during which an eleven hour shift was recorded between April 24, 2010 and April 24, 2013, based on the Plaintiff's current overtime rate of pay, less applicable local, state and federal taxes and other withholdings;

3. The value of the payments identified in provisions 1 and 2 above shall be determined by the City's auditor and notice of the value of the payment is attached as an exhibit to this Agreement;

4. The taxable year of the payments identified in provisions 1 and 2 above shall be the calendar year in accordance with Treasury Regulation § 1.468B-2(j).

B. The City agrees that once the Court has approved the settlement and the City Council has adopted a resolution providing for paid meal periods to dispatchers, it shall provide paid meal periods to all City dispatchers for every shift in excess of five and one-half (5 ½) hours in length.

C. The Parties agree that upon the execution of this Agreement by all five (5) Plaintiffs, City Council approval of the Agreement, and final Court approval of the Settlement and Agreement, the City shall perform the following acts:

1. Within thirty (30) calendar days following the Court's final approval of this Agreement, the City shall cause to be mailed settlement checks to each Plaintiff, subject to provisions 1 - 4 above.

IV. ATTORNEYS' FEES

The City agrees to pay Twenty-Five Thousand Dollars (\$25,000) in attorneys' fees to counsel for Plaintiffs, payable to Adams, Ferrone & Ferrone within thirty (30) days following the Court's final approval of this Agreement. The City agrees that this amount is reasonable based on the facts of the case and the reasonable hourly rate of \$450 for the services of Michael M. McGill.

V. PLAINTIFFS' RELEASED CLAIMS

A. Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Plaintiffs do, as of the Settlement Effective Date (defined as the date the Court grants final approval of the Settlement Agreement), hereby irrevocably release, acquit and forever discharge the City of and from any and all claims, rights, penalties, demands, debts, accounts, duties, costs and expenses (other than those required to be paid pursuant to Section IV of this Agreement), liens, charges, complaints, causes of action, obligations or liability for all claims that they have brought that were asserted in the Action.

B. The Plaintiffs' released claims include the common law and equitable claims, state statutory claims, and federal statutory claims listed in provision I IV.B.1. below related to alleged (i) off-the-clock work, which includes claims relating to non-payment of wages because work was performed off the clock and any recordkeeping violations that are a result of work being performed off the clock and therefore, not being recorded; (ii) meal periods that were not provided or meal periods that were interrupted; and (iii) accurate creation, retention, and preservation of time records; (iv) alteration of time records and hours worked without proper authorization; and (v) claims that the City failed to pay overtime hours or other wages, including claims related to how overtime is calculated.

1. Federal Statutory Claims: Any and all claims arising under the Fair Labor Standards Act, 29 USC § 201 *et seq.*, including, without limitation, §§ 206, 207(a), 211(c), 215 and 216(b); and any and all claims arising under the Employee Retirement Income Security Act, 29 USC § 1001 *et seq.*, including, without limitation, §§ 1132 and 1140.

2. State Statutory Claims: Any and all Claims arising under the California Labor Code, including, without limitation, all claims arising from statutes pertaining to meal periods, overtime, late payment of wages, and any and all claims for treble or enhanced damages or penalties in connection therewith.

3. Each and every Plaintiff affirmatively represents that they are unaware of any other actual or potential claims they have or may have against the City, separate from those addressed by this Agreement, related to this Action.

VI. STATEMENT OF NO ADMISSION

A. Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of the City, and the City denies liability

therefor. Nor shall this Agreement constitute an admission by the City as to any interpretation of laws or as to the merits, validity or accuracy of the claims made against it in the Action. Likewise, nothing in this Agreement shall be construed or deemed an admission with regard to the validity of any of the City's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. The release given by the Plaintiffs also includes a release of all claims for attorneys' fees and costs incurred by the Plaintiffs or by counsel for Plaintiffs in connection with the Action and settlement of the Action, other than as provided herein.

B. This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible as evidence and shall not be used for any purpose in any judicial, arbitral, administrative, investigative or other court, tribunal, forum or proceeding, including any wage and hour or other litigation against the City, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

VII. NOTICES

A. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if hand delivered; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

To the Plaintiffs:

Michael M. McGill
ADAMS FERRONE & FERRONE
4333 Park Terrace Drive, Suite 200
Westlake Village, CA 91361
Tel.(805) 373-5900
Fax. (805) 874-1382

To the City:

Colin J. Tanner
Laura Walker
ALESHIRE & WYNDER LLP
18881 Von Karman Ave., Ste 1700
Irvine, CA 92620
Tel. (949) 223-1170
Fax. (949) 223-1180

VIII. MISCELLANEOUS PROVISIONS

A. **No Assignment of Claims.** Plaintiffs warrants that they have made no assignment, and will make no assignment, of any claim, cause in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

B. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

C. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The City further specifically represents that prior to signing this Agreement, it conferred with its legal counsel to the extent desired concerning the legal effect of this Agreement. Plaintiffs further specifically represent that they were advised to confer with their legal counsel concerning the legal effect of this Agreement, that they may be giving up important legal rights by entering into this Agreement, and that they should seek independent legal counsel prior to entering into this Agreement.

D. **Assistance of Counsel.** The Parties each specifically represent that they have either consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement, or that they have knowingly, voluntarily and of their own accord chosen not to do so.

E. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

F. **Singular and Plural.** Whenever required by the context, as used in this Agreement the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

G. **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

H. **Injunctive Relief for Breach.** The Parties acknowledge and agree that any material violation of this Agreement is likely to result in immediate and irreparable harm for which monetary damages are likely to be inadequate. Accordingly, the Parties consent to injunctive and other appropriate equitable relief upon the institution of proceedings therefor by any other party in order to protect the rights of the Parties under this Agreement. Such relief shall be in addition to any other relief to which the Parties may be entitled at law or in equity.

I. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

J. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

K. **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

L. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

M. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within

N. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

O. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have read all of the foregoing, understand the same, have agreed to all of the terms and conditions herein and have executed this Settlement Agreement and Release of All Claims, consisting of a total of ten (10) pages, on the dates set forth below.

"CITY"

Dated: Jan. 29, 2014

CITY OF LOMPOC

By: [Signature]

ATTESTED TO BY:

By: [Signature] 1/29/14
City Clerk

APPROVED AS TO FORM:

Dated: January 28, 2014

ALESHIRE & WYNDER, LLP

By: [Signature]
Colin Farmer, Esq. Laura Walker, Esq.
Attorneys for Defendant CITY OF LOMPOC

"PLAINTIFFS"

Dated: 01/22/14, 2014

By: [Signature]
Rachel Delcener

Dated: 01/22/14, 2014

By: [Signature]
Gail Densmore

Dated: 01/24/14, 2014

By: [Signature]
Mathew Paine

Dated: Jan 23, 2014

By: [Signature]
Trish Warfield

Dated: 01/23, 2014

By: [Signature]
Leah Chase

APPROVED AS TO FORM:

Dated: 11-27, 2014

ADAMS, FERRONE & FERRONE

By: 

Michael M. McGill, Esq.

Attorney for Plaintiffs Rachel Delkener, Gail
Densmore, Mathew Paine, Trish Warfield &
Leah Chase

[END OF SIGNATURES & END OF AGREEMENT]