

**Side Letter No. 2 between the Deputy Sheriff's
Association and the County of Monterey Amending the
Memorandum of Understanding (MOU) effective
July 1, 2011 – June 30, 2013**

The Deputy Sheriff's Association of Monterey County (DSA), certain DSA members, and the County of Monterey entered into a Settlement Agreement filed on November 28, 2011, as a result of *Daniel J. Mitchell, et al. vs. County of Monterey* (United States Case Number 5:08-cv-01166-JW)(the "FLSA Action"), which alleged that employees in the Sheriff's Office were not being paid in compliance with Fair Labor Standards Act (FLSA).

The term "special paid leave" is not defined in the current MOU, nor is that type of leave category programmed into the County's payroll system. In order to (a) ensure that "special paid leave" is calculated as time worked for purposes of overtime calculations, (b) provide adequate time for the eligible County employees to utilize the "special paid leave" awarded pursuant to Section 1 of the Settlement Agreement prior to its expiration, and (c) implement the parties' intended limitations on "special paid leave" awarded pursuant to Section 2, the DSA and County agree to the following:

1. Any County employee entitled to "special paid leave" in accordance with the terms of the Settlement Agreement, shall have that time treated as "time actually worked" per the MOU Addendums for Units A, A1 and B if such leave is utilized by an entitled County employee.
2. In recognition of the County's delay in programming the "special paid leave" bank into the payroll system, employees eligible for the "special paid leave", will have their "special paid leave" hours accrued under paragraphs one and two of the Settlement Agreement credited to their vacation accrual for year one. The hours awarded through the settlement agreement for year two will be placed in the "special paid leave" bucket. In year two, any hours credited shall be taken within the same calendar year unless the County fails to provide the aforementioned employees their "special paid leave hours" for year two by the end of the first paid period for DSA employees in 2013. If the County fails to provide the aforementioned employees their "special paid leave hours" for year two by the end of the first paid period for DSA employees in 2013, said employees will have their "special paid leave" hours credited to their vacation.
3. "Special paid leave" hours that are awarded shall be taken within the same calendar year.
4. If an employee who qualifies for the "special paid leave" as defined in Section 2 of the Settlement Agreement is transferred, promoted, demoted or assigned to a position covered by the MOU but that does not qualify for the "special paid

leave”, the employee shall be entitled to use any remaining “special paid leave” balance prior to the end of the calendar year in which the “special paid leave” was granted.

5. If an employee who qualifies for the “special paid leave” as defined in Section 2 of the Settlement Agreement is transferred, promoted, demoted or assigned to a position that qualifies for a different amount of “special paid leave”, the employee’s “special paid leave” bank shall be adjusted to the nearest hour in proportion to the number of months that the employee worked in each eligible classification during that calendar year. If the employee has used any of the “special paid leave” hours in that calendar year, the total number of hours used will be subtracted from the adjusted balance. If the total number of “special paid leave” hours used exceeds the adjusted balance, the employee shall not be entitled to any additional hours nor will the employee “owe” the County any hours in return. In no case shall any employee be entitled to more than thirty-two (32) hours of “special paid leave” in any calendar year.
6. Employees shall not be allowed to “cash out” any “special paid leave” hours, nor to accrue those hours beyond the calendar year in which they are earned, except as provided in No. 2 above where the “special paid leave” hours will be awarded by crediting employees’ vacation bucket..
7. The “special leave hours” for resolution of past claims and future claims shall be deposited concurrently for years one and two (i.e., 2012 and 2013, respectively).
8. If crediting “special paid leave” hours to an employee’s vacation bank would cause the employee’s vacation accruals to exceed four hundred (400) hours during the 2012 calendar year, the employee may elect to “cash out” the “special paid leave” hours” owed him or her for year one at his or her regular rate of pay. Hours of “special paid leave” cashed out pursuant to this Paragraph shall not count towards the forty (40) hours of vacation time an employee is allowed to cash out each calendar year.
9. Any employee retiring before December 31, 2012 who signed a waiver prior to June 30, 2012, or was a plaintiff in the FLSA Action shall be entitled to cash out all “special paid leave” hours owed him or her at his or her regular rate of pay for the last pay period he or she was employed by the County of Monterey.

Sections 1 and 2 of the Settlement Agreement provide for the award of “special paid leave” to certain eligible County employees in accordance with the terms and conditions of the Settlement Agreement. See below:

Resolution of past claims

- In year one, sixteen (16) hours of vacation for one year for named plaintiffs currently employed with the County of Monterey. In year two, sixteen (16) hours of “special paid leave” for one year for named plaintiffs currently employed with the County of Monterey

- In year one, eight (8) hours of vacation for all *other* sworn personnel in the Sheriff's Department and District Attorney Investigators I, II, III for two years, who were employed as such when the Settlement Agreement was approved by the court (i.e., November 28, 2011) and executed a waiver and release. Sworn personnel hired after that date would not have any FLSA claim that they waive, since the settlement Agreement has resolved the problem. In year two, eight (8) hours of "special paid leave" for all *other* sworn personnel in the Sheriff's Department and District Attorney Investigators I, II, III for two years, who were employed as such when the Settlement Agreement was approved by the court (i.e., November 28, 2011) and executed a waiver and release. Sworn personnel hired after that date would not have any FLSA claim that they waive, since the settlement Agreement has resolved the problem.

Resolution of future claims

- In year one, sixteen (16) hours of vacation for all sergeants (excluding Sheriff's Investigative Sergeants). In year two, sixteen (16) hours of "special paid leave" for all sergeants (excluding Sheriff's Investigative Sergeants).

In year one, eight (8) hours of vacation for all deputies who are regularly assigned to work inside the jail facility. In year two, eight (8) hours of "special paid leave" for all deputies who are regularly assigned to work inside the jail facility.

It is the parties' intent that the maximum aggregate "special paid leave" awarded pursuant to Section 2 not exceed 32 hours in any calendar year for certain County employees defined in the Settlement Agreement, and that such leave only be available during the time the eligible employee shall only be available while the eligible employee remains in a classification entitled to receive special paid leave under the Settlement Agreement.

Section 3 of the Settlement Agreement specifies that the "special paid leave" awarded must be used within the applicable year or it will be lost (i.e., is received on a "use it or lose it basis") and must be taken at a time mutually agreed between the individual and his supervisors.

All other provisions of the Settlement Agreement shall remain in full force and effect.

Deputy Sheriffs' Association

Scott K. Miller, Sheriff-Coroner

County of Monterey