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6 Attorneys for Plaintiffs

7

8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 T.J. McDERMOTT, ASHLEY ADAMS, TYLER ADAMS,) Dept. No.:
 PATRICK ANDERSON, JUSTIN ANDREWS, DUSTIN) Cause No.:
 10 ATKINS, ANDREW BAKER, MATTHEW BARNES,)
 JAMES BARNT, SHANE BARRAUGH, MATHEW)
 11 BODILY, KARLEY BRENTS, KELSEY BRESTER,)
 ANDREW BRESTER, MITCHELL BRESTER,)
 12 CAMERON BREWER, WILLIAM BROWN, DERRICK)
 BURDEN, KRISTY BURKHART, WANDA BURT,) **COMPLAINT**
 13 TYLER BURT, KENDRA CHAMBERLAIN, LISA)
 CROCKETT, SUE DOSSETT, JOSH EDISON,)
 14 JORDYN ENGLAND, CHRIS FOSTER, MICHAEL)
 FRAME, JOHN GOTTULA, PATRICK GRUBER,)
 15 JEFFREY GUECK, ALBERTO GUTIERREZ, DEVYN)
 HAFER, ASHLEY HARRIGER, JASON HENRY,)
 16 DERALD HERBERT, ROBERT JEFFREYS, PADEN)
 JENKINS, LUKE JOHNSON, TOBIAS JOHNSTON,)
 17 NATHAN JOHNSTON, SCOTT KAUTZ, DANNY KERR,)
 KELLY KIRWAN, JANINE KOWALSKI, BRYAN)
 18 LARSON, ERIC LECHLEITNER, NICOLE LEE-RYE,)
 DONALD LOWRY, MICHAEL MACESICH, AMANDA)
 19 MACK, SHARON MACKIE-WENDEL, RYAN)
 MANNING, GAVIN MARSH, STEPHENIE MARSHALL,)
 20 NATHAN MARTIN, KARRY MARTYN, PEARL)
 McDUNN, AUSTYN MEINZEN, COLE MODEN,)

1 NATHAN NASH, JAMES NESBITT, TRAVIS NIELSON,)
SAVANNAH NYBERG, NASH O'HARA, ANTHONY)
2 PEARCE, DEBRA REINER, RICK RENFRO, D'ARCY)
REUTERDAHL, JOSHUA REYNOSO, JACOB)
3 REYNOSO, KALE RIFE, MATTHEW ROBB, HUNTER)
RODRICK, MARILYN RUGULEISKI, CORY RUSHING,)
4 CASSIDY RUSSELL, ROBERT SCHMIDT, HUDSON)
SHERMER, RACQUEL SHOUBE, WILLIE SIMMONS,)
5 WILLIAM SMOLINSKI, PAUL STICKNEY, JOSHUA)
SWEENEY, TERA L. TACKETT, KEITH THOMPSON,)
6 TONIA TURNER, PATRICK TVERAA, MICHELLE VAN)
HALEN, DEBBIE WATSON, SCOTT WHEELER,)
7 TRAVIS WILLIAMS, JOHN WILSON, JAMI WINZEL)
and PLAINTIFF DOES 1-100,)

8 Plaintiffs,)

9 v.)

10 MISSOULA COUNTY, a political subdivision of the)
State of Montana,)

11 Defendant.)
12

13 COME NOW, Plaintiffs and state and allege as follows:

14 **INTRODUCTION**

15 1. Plaintiffs were, at the times relevant to this Complaint, residents
16 and citizens of Montana, employed by Missoula County.

17 2. Defendant Missoula County (the "County") is a political
18 subdivision of the State of Montana.

19 3. Plaintiff T.J. McDermott ("Sheriff McDermott") is, and was at all
20 times relevant hereto, the duly elected sheriff of Missoula County and an

1 employee of Missoula County.

2 4. All other plaintiffs were, at the times relevant to this Complaint,
3 employed as detention officers for adults and/or juveniles within the County
4 (hereafter collectively "Detention Officers").

5 5. This is a complaint for violation of the Montana Wage Claim Act
6 seeking to recover unpaid wages owed by the County to the Plaintiffs.

7 6. The actions that are the subject of this Complaint (i.e., failure to
8 properly calculate and pay wages) occurred in Missoula County, Montana.

9 **JURISDICTION AND VENUE**

10 7. Plaintiffs incorporate by reference the other paragraphs of this
11 Complaint as though fully set forth herein.

12 8. Jurisdiction is proper pursuant to Mont. Code Ann. § 2-9-311.

13 9. Venue is proper in this Court.

14 **BACKGROUND**

15 10. Compensation for Sheriff McDermott is set out by Montana
16 statutory law, specifically Mont. Code Ann. 7-4-2503. Pursuant to the
17 statute, a county sheriff must at a minimum be paid the same salary as
18 other elected county officials, plus \$2,000/year. Mont. Code Ann. 7-4-
19 2503(2)(b). The sheriff's salary, and any additional salary paid to the sheriff,
20 must be included as salary when calculating compensation for undersheriffs

1 and deputy sheriffs. Mont. Code. Ann. 7-4-2503(2)(b) and (c).

2 11. Detention Officer salaries in Missoula County are established by
3 pay matrices pursuant to which each Detention Officer receives a
4 percentage of the sheriff's salary dependent upon the rank and longevity of
5 the particular officer. An example of one applicable pay matrix is attached
6 as Ex. 1 hereto. (Ex. 1 is the 2022 Adult Detention Officer Matrix). For each
7 year at issue in this case and type of officer (i.e. adult or juvenile) a different
8 pay matrix applies, but all possess the same central characteristic:

9 Detention Officers' pay rates are calculated as a percentage of the county
10 sheriff's pay rate. (Hereafter, these are individually referenced as a "Matrix"
11 or collectively as "Matrices"). The county sheriff's pay rate is in turn
12 statutorily linked to the pay rates of other elected officials and must include
13 all elements of salary payable to the other elected officials.

14 12. The subject compensation paid to Plaintiffs constitutes wages
15 under Mont. Code Ann. § 39-3-201.

16 13. In each Matrix, Detention Officer compensation is based on the
17 Sheriff's base rate of pay as determined in accordance with Mont. Code
18 Ann. § 7-4-2503. In other words, Detention Officer pay is, like deputy sheriff
19 pay, intended to correlate to the sheriff's pay, and any additions to the
20 sheriff's pay that are includable in deputy sheriff compensation must also be

1 included in Detention Officer compensation.

2 14. The Matrices further reinforce this connection between Detention
3 Officer pay and the sheriff's pay by describing each pay rate, stating for
4 example that the sheriff's was \$79,019.20 on that date (see Ex. 1, left
5 column) and then calculating each officer's pay rate as a specified
6 percentage of the sheriff's salary, depending upon rang and longevity.

7 15. When Plaintiffs worked overtime, or more than eighty (80) hours
8 in a fourteen-day (14) work period, the County must pay them at the rate of
9 one and one-half times (1.5) their base hourly rate as provided by Mont.
10 Code Ann. § 7-4-2509(2) (2019), and the Matrices.

11 16. For the purposes of determining a sheriff's salary in calculating
12 compensation for deputies, and therefore Detention Officers, any salary
13 supplements (other than the sheriff's *statutory* longevity payment) must be
14 included in the salary. *Clouse v. Lewis and Clark County*, 2008 MT 271 ¶
15 42. Montana Law requires compensation be based upon "the entire salary
16 of that sheriff." *Id.* ¶ 44 (emphasis added). In fact, in the relatively recent
17 case of *Swandal et. al. v. Gallatin County* (Order re: Cross Motions for
18 Summary Judgment attached as Ex. 2), a district court applied *Clouse* and
19 expressly stated, "the entire salary of the sheriff *is the base salary.*" *Id.* 10
20 (emphasis added).

1 for all of the specified officials, including the sheriff, by \$3.08 per hour
2 beginning July 1, 2018, and by another \$1.00 per hour beginning January 1,
3 2019. This amounts to a total increase of \$6.00 per hour by January 1,
4 2019.

5 21. Additionally, the County officials, through its Compensation
6 Committee (largely comprised of elected officials) voted in to increase all
7 elected officials' other than the sheriff's Parity Adjustment to \$8.04 per
8 hour—a sum which statutorily should have been included in the sheriff's
9 salary but was withheld from Sheriff McDermott in violation of the statutory
10 uniformity requirement.

11 22. Upon information and belief, the County paid the sheriff the
12 \$6.00 per hour "Parity Adjustment" through the end of FY 2021, i.e. through
13 6/30/2021.

14 23. In an apparent effort to increase the salaries of elected officials
15 and circumvent their statutory linkage to the sheriff's salary (and the trickle-
16 down linkage to Sheriff McDermott and the Detention Officers) the County's
17 Compensation Committee enacted a "longevity payment" scheme. Upon
18 information and belief, this began July 1, 2022 and has continued through
19 the present. The longevity payment scheme was simply intended as a
20 substitute for the Parity Adjustment the County had previously used to

1 attempt to circumvent its obligations and bears remarkable likeness to the
2 “County Longevity” scheme deemed illegal in *Swandal et. al. v. Gallatin*
3 *County* (See Ex. 2).

4 24. Both the Parity Adjustment and the County Longevity payments
5 were part of an ongoing and interconnected continuing scheme to give
6 elected officials salary increases, while depriving Detention Officers of the
7 corresponding salary increases.

8 25. The County has also been illegally withholding payment of
9 \$2.04/hour of the Parity Adjustment, and all of the County Longevity to
10 Sheriff McDermott. Upon information and belief, this was done as a scheme
11 by the elected officials sitting on the County’s Compensation Committee to
12 give the elected officials a raise without passing it along to Sheriff
13 McDermott and the Detention Officers.

14 26. Under the County Longevity scheme, elected officials are being
15 rewarded for simply remaining in their jobs. This is not a legal factor for pay
16 increases under Mont. Code Ann. § 7-4-2503(4)(c).

17 27. The statutes do not authorize a County to exclude compensation
18 from a sheriff’s salary calculation by labelling it as something other than
19 “salary.” Rather, as set forth in the *Clouse* case, all compensation paid opr
20 payable to the sheriff other than *statutory* longevity pay and overtime must

1 be included in the determination of the sheriff's "salary" for purposes of
2 calculating the sheriff's true compensation and therefore must be
3 proportionately included in the pay of the Detention Officers.

4 28. The County should have included the Sheriff's Parity Adjustment
5 and its replacement, County Longevity pay, as part of the Sheriff's salary
6 upon which the Detention Officers' compensation is calculated. Similarly,
7 the County should have paid Sheriff McDermott the additional \$2.04 of
8 Parity Adjustment and all of the County Longevity is has been paying to
9 other elected officials.

10 29. The County has underpaid the wages of Sheriff McDermott and
11 the other Plaintiffs under Montana law.

12 30. By failing to pay Sheriff McDermott pursuant to statutory
13 requirements, and failing to include statutorily required sums when
14 calculating the Detention Officer's salaries, the County has failed to
15 appropriately calculate Plaintiffs' wages, longevity payments, overtime
16 payments and potentially other benefits as well.

17 **PLAINTIFFS**

18 31. Plaintiff T.J. McDermott is the duly elected county sheriff of
19 Missoula County. At all times relevant to this Complaint, he was employed in
20 that capacity and receiving wages from the County.

1 32. Plaintiff Ashley Adams was, at times relevant to this Complaint,
2 employed by the County as a detention officer and receiving wages from the
3 County.

4 33. Plaintiff Tyler Adams was, at times relevant to this Complaint,
5 employed by the County as a detention officer and receiving wages from the
6 County.

7 34. Plaintiff Patrick Anderson was, at times relevant to this Complaint,
8 employed by the County as a detention officer and receiving wages from the
9 County.

10 35. Plaintiff Justin Andrews was, at times relevant to this Complaint,
11 employed by the County as a detention officer and receiving wages from the
12 County.

13 36. Plaintiff Dustin Atkins was, at times relevant to this Complaint,
14 employed by the County as a detention officer and receiving wages from the
15 County.

16 37. Plaintiff Andrew Baker was, at times relevant to this Complaint,
17 employed by the County as a detention officer and receiving wages from the
18 County.

19 38. Plaintiff Miatthew Barnes was, at times relevant to this Complaint,
20 employed by the County as a detention officer and receiving wages from the

1 County.

2 39. Plaintiff James Barnt was, at times relevant to this Complaint,
3 employed by the County as a detention officer and receiving wages from the
4 County.

5 40. Plaintiff Shane Barraugh was, at times relevant to this Complaint,
6 employed by the County as a detention officer and receiving wages from the
7 County.

8 41. Plaintiff Mathew Bodily was, at times relevant to this Complaint,
9 employed by the County as a detention officer and receiving wages from the
10 County.

11 42. Plaintiff Karley Brents was, at times relevant to this Complaint,
12 employed by the County as a detention officer and receiving wages from the
13 County.

14 43. Plaintiff Kelsey Brester was, at times relevant to this Complaint,
15 employed by the County as a detention officer and receiving wages from the
16 County.

17 44. Plaintiff Andrew Brester was, at times relevant to this Complaint,
18 employed by the County as a detention officer and receiving wages from the
19 County.

20 45. Plaintiff Mitchell Brester was, at times relevant to this Complaint,

1 employed by the County as a detention officer and receiving wages from the
2 County.

3 46. Plaintiff Cameron Brewer was, at times relevant to this Complaint,
4 employed by the County as a detention officer and receiving wages from the
5 County.

6 47. Plaintiff William Brown was, at times relevant to this Complaint,
7 employed by the County as a detention officer and receiving wages from the
8 County.

9 48. Plaintiff Derrick Burden was, at times relevant to this Complaint,
10 employed by the County as a detention officer and receiving wages from the
11 County.

12 49. Plaintiff Kristy Burkhart was, at times relevant to this Complaint,
13 employed by the County as a detention officer and receiving wages from the
14 County.

15 50. Plaintiff Wanda Burt was, at times relevant to this Complaint,
16 employed by the County as a detention officer and receiving wages from the
17 County.

18 51. Plaintiff Tyler Burt was, at times relevant to this Complaint,
19 employed by the County as a detention officer and receiving wages from the
20 County.

1 52. Plaintiff Kendra Chamberlain was, at times relevant to this
2 Complaint, employed by the County as a detention officer and receiving
3 wages from the County.

4 53. Plaintiff Lisa Crockett was, at times relevant to this Complaint,
5 employed by the County as a detention officer and receiving wages from the
6 County.

7 54. Plaintiff Sue Dossett was, at times relevant to this Complaint,
8 employed by the County as a detention officer and receiving wages from the
9 County.

10 55. Plaintiff Josh Edison was, at times relevant to this Complaint,
11 employed by the County as a detention officer and receiving wages from the
12 County.

13 56. Plaintiff Jordyn England was, at times relevant to this Complaint,
14 employed by the County as a detention officer and receiving wages from the
15 County.

16 57. Plaintiff Chris Foster was, at times relevant to this Complaint,
17 employed by the County as a detention officer and receiving wages from the
18 County.

19 58. Plaintiff Michael Frame was, at times relevant to this Complaint,
20 employed by the County as a detention officer and receiving wages from the

1 County.

2 59. Plaintiff John Gottula was, at times relevant to this Complaint,
3 employed by the County as a detention officer and receiving wages from the
4 County.

5 60. Plaintiff Patrick Gruber was, at times relevant to this Complaint,
6 employed by the County as a detention officer and receiving wages from the
7 County.

8 61. Plaintiff Jeffrey Gueck was, at times relevant to this Complaint,
9 employed by the County as a detention officer and receiving wages from the
10 County.

11 62. Plaintiff Alberto Gutierrez was, at times relevant to this Complaint,
12 employed by the County as a detention officer and receiving wages from the
13 County.

14 63. Plaintiff Devyn Hafer was, at times relevant to this Complaint,
15 employed by the County as a detention officer and receiving wages from the
16 County.

17 64. Plaintiff Ashley Harriger was, at times relevant to this Complaint,
18 employed by the County as a detention officer and receiving wages from the
19 County.

20 65. Plaintiff Jason Henry was, at times relevant to this Complaint,

1 employed by the County as a detention officer and receiving wages from the
2 County.

3 66. Plaintiff Derald Herbert was, at times relevant to this Complaint,
4 employed by the County as a detention officer and receiving wages from the
5 County.

6 67. Plaintiff Robert Jeffreys was, at times relevant to this Complaint,
7 employed by the County as a detention officer and receiving wages from the
8 County.

9 68. Plaintiff Paden Jenkins was, at times relevant to this Complaint,
10 employed by the County as a detention officer and receiving wages from the
11 County.

12 69. Plaintiff Luke Johnson was, at times relevant to this Complaint,
13 employed by the County as a detention officer and receiving wages from the
14 County.

15 70. Plaintiff Tobias Johnston was, at times relevant to this Complaint,
16 employed by the County as a detention officer and receiving wages from the
17 County.

18 71. Plaintiff Nathan Johnston was, at times relevant to this Complaint,
19 employed by the County as a detention officer and receiving wages from the
20 County.

1 72. Plaintiff Scott Kautz was, at times relevant to this Complaint,
2 employed by the County as a detention officer and receiving wages from the
3 County.

4 73. Plaintiff Danny Kerr was, at times relevant to this Complaint,
5 employed by the County as a detention officer and receiving wages from the
6 County.

7 74. Plaintiff Kelly Kirwan was, at times relevant to this Complaint,
8 employed by the County as a detention officer and receiving wages from the
9 County.

10 75. Plaintiff Janine Kowalski was, at times relevant to this Complaint,
11 employed by the County as a detention officer and receiving wages from the
12 County.

13 76. Plaintiff Bryan Larson was, at times relevant to this Complaint,
14 employed by the County as a detention officer and receiving wages from the
15 County.

16 77. Plaintiff Eric Lechleitner was, at times relevant to this Complaint,
17 employed by the County as a detention officer and receiving wages from the
18 County.

19 78. Plaintiff Nicole Lee-Rye was, at times relevant to this Complaint,
20 employed by the County as a detention officer and receiving wages from the

1 County.

2 79. Plaintiff Donald Lowry was, at times relevant to this Complaint,
3 employed by the County as a detention officer and receiving wages from the
4 County.

5 80. Plaintiff Michael Macesich was, at times relevant to this
6 Complaint, employed by the County as a detention officer and receiving
7 wages from the County.

8 81. Plaintiff Amanda Mack was, at times relevant to this Complaint,
9 employed by the County as a detention officer and receiving wages from the
10 County.

11 82. Plaintiff Sharon Mackie-Wendel was, at times relevant to this
12 Complaint, employed by the County as a detention officer and receiving
13 wages from the County.

14 83. Plaintiff Ryan Manning was, at times relevant to this Complaint,
15 employed by the County as a detention officer and receiving wages from the
16 County.

17 84. Plaintiff Gavin Marsh was, at times relevant to this Complaint,
18 employed by the County as a detention officer and receiving wages from the
19 County.

20 85. Plaintiff Stephenie Marshall was, at times relevant to this

1 Complaint, employed by the County as a detention officer and receiving
2 wages from the County.

3 86. Plaintiff Nathan Martin was, at times relevant to this Complaint,
4 employed by the County as a detention officer and receiving wages from the
5 County.

6 87. Plaintiff Karry Martyn was, at times relevant to this Complaint,
7 employed by the County as a detention officer and receiving wages from the
8 County.

9 88. Plaintiff Pearl McDunn was, at times relevant to this Complaint,
10 employed by the County as a detention officer and receiving wages from the
11 County.

12 89. Plaintiff Austyn Meinzen was, at times relevant to this Complaint,
13 employed by the County as a detention officer and receiving wages from the
14 County.

15 90. Plaintiff Cole Moden was, at times relevant to this Complaint,
16 employed by the County as a detention officer and receiving wages from the
17 County.

18 91. Plaintiff Nathan Nash was, at times relevant to this Complaint,
19 employed by the County as a detention officer and receiving wages from the
20 County.

1 92. Plaintiff James Nesbitt was, at times relevant to this Complaint,
2 employed by the County as a detention officer and receiving wages from the
3 County.

4 93. Plaintiff Travis Nielson was, at times relevant to this Complaint,
5 employed by the County as a detention officer and receiving wages from the
6 County.

7 94. Plaintiff Savannah Nyberg was, at times relevant to this
8 Complaint, employed by the County as a detention officer and receiving
9 wages from the County.

10 95. Plaintiff Nash O'hara was, at times relevant to this Complaint,
11 employed by the County as a detention officer and receiving wages from the
12 County.

13 96. Plaintiff Anthony Pearce was, at times relevant to this Complaint,
14 employed by the County as a detention officer and receiving wages from the
15 County.

16 97. Plaintiff Debra Reiner was, at times relevant to this Complaint,
17 employed by the County as a detention officer and receiving wages from the
18 County.

19 98. Plaintiff Rick Renfro was, at times relevant to this Complaint,
20 employed by the County as a detention officer and receiving wages from the

1 County.

2 99. Plaintiff D'arcy Reuterdaahl was, at times relevant to this
3 Complaint, employed by the County as a detention officer and receiving
4 wages from the County.

5 100. Plaintiff Joshua Reynoso was, at times relevant to this Complaint,
6 employed by the County as a detention officer and receiving wages from the
7 County.

8 101. Plaintiff Jacob Reynoso was, at times relevant to this Complaint,
9 employed by the County as a detention officer and receiving wages from the
10 County.

11 102. Plaintiff Kale Rife was, at times relevant to this Complaint,
12 employed by the County as a detention officer and receiving wages from the
13 County.

14 103. Plaintiff Matthew Robb was, at times relevant to this Complaint,
15 employed by the County as a detention officer and receiving wages from the
16 County.

17 104. Plaintiff Hunter Rodrick was, at times relevant to this Complaint,
18 employed by the County as a detention officer and receiving wages from the
19 County.

20 105. Plaintiff Marilyn Ruguleiski was, at times relevant to this

1 Complaint, employed by the County as a detention officer and receiving
2 wages from the County.

3 106. Plaintiff Cory Rushing was, at times relevant to this Complaint,
4 employed by the County as a detention officer and receiving wages from the
5 County.

6 107. Plaintiff Cassidy Russell was, at times relevant to this Complaint,
7 employed by the County as a detention officer and receiving wages from the
8 County.

9 108. Plaintiff Robert Schmidt was, at times relevant to this Complaint,
10 employed by the County as a detention officer and receiving wages from the
11 County.

12 109. Plaintiff Hudson Shermer was, at times relevant to this Complaint,
13 employed by the County as a detention officer and receiving wages from the
14 County.

15 110. Plaintiff Racquel Shoupe was, at times relevant to this Complaint,
16 employed by the County as a detention officer and receiving wages from the
17 County.

18 111. Plaintiff Willie Simmons was, at times relevant to this Complaint,
19 employed by the County as a detention officer and receiving wages from the
20 County.

1 112. Plaintiff William Smolinski was, at times relevant to this
2 Complaint, employed by the County as a detention officer and receiving
3 wages from the County.

4 113. Plaintiff Paul Stickney was, at times relevant to this Complaint,
5 employed by the County as a detention officer and receiving wages from the
6 County.

7 114. Plaintiff Joshua Sweeney was, at times relevant to this Complaint,
8 employed by the County as a detention officer and receiving wages from the
9 County.

10 115. Plaintiff Tera L. Tackett was, at times relevant to this Complaint,
11 employed by the County as a detention officer and receiving wages from the
12 County.

13 116. Plaintiff Keith Thompson was, at times relevant to this Complaint,
14 employed by the County as a detention officer and receiving wages from the
15 County.

16 117. Plaintiff Tonia Turner was, at times relevant to this Complaint,
17 employed by the County as a detention officer and receiving wages from the
18 County.

19 118. Plaintiff Patrick Tveraa was, at times relevant to this Complaint,
20 employed by the County as a detention officer and receiving wages from the

1 County.

2 119. Plaintiff Michelle Van Halen was, at times relevant to this
3 Complaint, employed by the County as a detention officer and receiving
4 wages from the County.

5 120. Plaintiff Debbie Watson was, at times relevant to this Complaint,
6 employed by the County as a detention officer and receiving wages from the
7 County.

8 121. Plaintiff Scott Wheeler was, at times relevant to this Complaint,
9 employed by the County as a detention officer and receiving wages from the
10 County.

11 122. Plaintiff Travis Williams was, at times relevant to this Complaint,
12 employed by the County as a detention officer and receiving wages from the
13 County.

14 123. Plaintiff John Wilson was, at times relevant to this Complaint,
15 employed by the County as a detention officer and receiving wages from the
16 County.

17 124. Plaintiff Jami Winzel was, at times relevant to this Complaint,
18 employed by the County as a detention officer and receiving wages from the
19 County.

20 125. Plaintiff Does 1-100 are other Detention Officers who may have

1 been underpaid by the County in a similar fashion to the above-named.

2 **COUNT I: VIOLATION OF THE WAGE CLAIM ACT**

3 126. Plaintiffs incorporate the other paragraphs of this Complaint as if
4 fully set forth herein.

5 127. The County has violated the Montana Wage Claim Act by failing
6 to correctly calculate the wages owed to Plaintiffs and has underpaid them.

7 128. Each Plaintiff has been damaged in that there are back wages
8 due and owing to each for under-calculated compensation, overtime and
9 longevity.

10 129. The County has caused repeated violations of Mont. Code Ann.
11 § 39-3-204 by failing to pay the proper wages to multiple Plaintiffs when due
12 and failing to correct the error over multiple paychecks.

13 130. Plaintiffs are also entitled to recover unpaid wages and statutory
14 penalties for non-payment due and owing under Mont. Code Ann. § 39-3-
15 206.

16 131. Plaintiffs are entitled to reasonable attorney's fees and costs
17 under Mont. Code Ann. § 39-3-214.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request the Court enter an Order
20 and Judgment in favor of Plaintiffs and against the County as follows:

ADDENDUM B

FY 22	AFSCME DOAMC ADULT DETENTION FY 2022 MATRIX eff 6/27/2021															AFSCME - ADULT DETENTION - FY2022 MATRIX														
	PROBATIONARY Detention Officer I					Detention Officer I					Detention Officer I with 3 years service					Detention Officer I with 5 years service					Detention Corporal					Detention Sergeant				
	54% of Sheriff's Base \$42,670.37					57% of Sheriff's Base \$45,040.94					62% of Sheriff's Base - \$48,992.29					64% of Sheriff's Base \$50,972.29					66% of Sheriff's Base \$52,152.67					70% of Sheriff's Base \$55,313.44				
	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%
Rate	Years**	Rate	Rate	Add on	Rate	Years**	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	
\$79,019.20	\$20.51	0	\$0.00	\$20.51	1.03	\$21.65	0	\$0.00	\$21.65	1.08	\$23.55	0	\$0.00	\$23.55	1.18	\$24.31	0	\$0.00	\$24.31	1.22	\$25.07	0	\$0.00	\$25.07	1.25	\$26.59	0	\$0.00	\$26.59	1.33
\$37.99	\$20.51	1	\$0.21	\$20.72	1.04	\$21.65	1	\$0.22	\$21.87	1.09	\$23.55	1	\$0.24	\$23.79	1.19	\$24.31	1	\$0.24	\$24.56	1.23	\$25.07	1	\$0.25	\$25.32	1.27	\$26.59	1	\$0.27	\$26.86	1.34
Probationary DOI	\$20.51	2	\$0.41	\$20.92	1.05	\$21.65	2	\$0.43	\$22.09	1.10	\$23.55	2	\$0.47	\$24.02	1.20	\$24.31	2	\$0.49	\$24.80	1.24	\$25.07	2	\$0.50	\$25.57	1.28	\$26.59	2	\$0.53	\$27.12	1.36
\$20.51	\$20.51	3	\$0.62	\$21.13	1.06	\$21.65	3	\$0.65	\$22.30	1.12	\$23.55	3	\$0.71	\$24.26	1.21	\$24.31	3	\$0.73	\$25.04	1.25	\$25.07	3	\$0.75	\$25.83	1.29	\$26.59	3	\$0.80	\$27.39	1.37
DOI (hourly)	\$20.51	4	\$0.82	\$21.34	1.07	\$21.65	4	\$0.87	\$22.52	1.13	\$23.55	4	\$0.94	\$24.50	1.22	\$24.31	4	\$0.97	\$25.29	1.26	\$25.07	4	\$1.00	\$26.08	1.30	\$26.59	4	\$1.06	\$27.66	1.38
\$21.65	\$20.51	5	\$1.03	\$21.54	1.08	\$21.65	5	\$1.08	\$22.74	1.14	\$23.55	5	\$1.18	\$24.73	1.24	\$24.31	5	\$1.22	\$25.53	1.28	\$25.07	5	\$1.25	\$26.33	1.32	\$26.59	5	\$1.33	\$27.92	1.40
DOI - 3 yrs (hourly)	\$20.51	6	\$1.23	\$21.75	1.09	\$21.65	6	\$1.30	\$22.95	1.15	\$23.55	6	\$1.41	\$24.97	1.25	\$24.31	6	\$1.46	\$25.77	1.29	\$25.07	6	\$1.50	\$26.58	1.33	\$26.59	6	\$1.60	\$28.19	1.41
\$23.55	\$20.51	7	\$1.44	\$21.95	1.10	\$21.65	7	\$1.52	\$23.17	1.16	\$23.55	7	\$1.65	\$25.20	1.26	\$24.31	7	\$1.70	\$26.02	1.30	\$25.07	7	\$1.76	\$26.83	1.34	\$26.59	7	\$1.86	\$28.45	1.42
DOI - 5 yrs (hourly)	\$20.51	8	\$1.64	\$22.16	1.11	\$21.65	8	\$1.73	\$23.39	1.17	\$23.55	8	\$1.88	\$25.44	1.27	\$24.31	8	\$1.95	\$26.26	1.31	\$25.07	8	\$2.01	\$27.08	1.35	\$26.59	8	\$2.13	\$28.72	1.44
\$24.31	\$20.51	9	\$1.85	\$22.36	1.12	\$21.65	9	\$1.95	\$23.60	1.18	\$23.55	9	\$2.12	\$25.67	1.28	\$24.31	9	\$2.19	\$26.50	1.33	\$25.07	9	\$2.26	\$27.33	1.37	\$26.59	9	\$2.39	\$28.95	1.45
CORPORAL (hourly)	\$20.51	10	\$2.05	\$22.57	1.13	\$21.65	10	\$2.17	\$23.82	1.19	\$23.55	10	\$2.36	\$25.91	1.30	\$24.31	10	\$2.43	\$26.74	1.34	\$25.07	10	\$2.51	\$27.58	1.38	\$26.59	10	\$2.66	\$29.25	1.46
\$25.07	\$20.51	11	\$2.26	\$22.77	1.14	\$21.65	11	\$2.38	\$24.04	1.20	\$23.55	11	\$2.59	\$26.14	1.31	\$24.31	11	\$2.67	\$26.99	1.35	\$25.07	11	\$2.76	\$27.83	1.39	\$26.59	11	\$2.93	\$29.52	1.48
SEERGEANT (hourly)	\$20.51	12	\$2.46	\$22.98	1.15	\$21.65	12	\$2.60	\$24.25	1.21	\$23.55	12	\$2.83	\$26.38	1.32	\$24.31	12	\$2.92	\$27.23	1.36	\$25.07	12	\$3.01	\$28.08	1.40	\$26.59	12	\$3.19	\$29.78	1.49
\$26.59	\$20.51	13	\$2.67	\$23.18	1.16	\$21.65	13	\$2.82	\$24.47	1.22	\$23.55	13	\$3.06	\$26.62	1.33	\$24.31	13	\$3.16	\$27.47	1.37	\$25.07	13	\$3.26	\$28.33	1.42	\$26.59	13	\$3.46	\$30.05	1.50
\$27.35	\$20.51	14	\$2.87	\$23.39	1.17	\$21.65	14	\$3.03	\$24.69	1.23	\$23.55	14	\$3.30	\$26.85	1.34	\$24.31	14	\$3.40	\$27.72	1.39	\$25.07	14	\$3.51	\$28.58	1.43	\$26.59	14	\$3.72	\$30.32	1.52
\$28.11	\$20.51	15	\$3.08	\$23.59	1.18	\$21.65	15	\$3.25	\$24.90	1.25	\$23.55	15	\$3.53	\$27.09	1.35	\$24.31	15	\$3.65	\$27.96	1.40	\$25.07	15	\$3.76	\$28.83	1.44	\$26.59	15	\$3.99	\$30.58	1.53
\$28.87	\$20.51	16	\$3.29	\$23.80	1.19	\$21.65	16	\$3.46	\$25.12	1.26	\$23.55	16	\$3.77	\$27.32	1.37	\$24.31	16	\$3.89	\$28.20	1.41	\$25.07	16	\$4.01	\$29.09	1.45	\$26.59	16	\$4.25	\$30.85	1.54
\$29.63	\$20.51	17	\$3.49	\$24.00	1.20	\$21.65	17	\$3.68	\$25.34	1.27	\$23.55	17	\$4.00	\$27.56	1.38	\$24.31	17	\$4.13	\$28.45	1.42	\$25.07	17	\$4.26	\$29.34	1.47	\$26.59	17	\$4.52	\$31.11	1.56
\$30.39	\$20.51	18	\$3.69	\$24.21	1.21	\$21.65	18	\$3.90	\$25.55	1.28	\$23.55	18	\$4.24	\$27.79	1.39	\$24.31	18	\$4.38	\$28.69	1.43	\$25.07	18	\$4.51	\$29.59	1.48	\$26.59	18	\$4.79	\$31.38	1.57
\$31.15	\$20.51	19	\$3.90	\$24.41	1.22	\$21.65	19	\$4.11	\$25.77	1.29	\$23.55	19	\$4.48	\$28.03	1.40	\$24.31	19	\$4.62	\$28.93	1.45	\$25.07	19	\$4.76	\$29.84	1.49	\$26.59	19	\$5.05	\$31.65	1.58
\$31.91	\$20.51	20	\$4.10	\$24.62	1.23	\$21.65	20	\$4.33	\$25.99	1.30	\$23.55	20	\$4.71	\$28.26	1.41	\$24.31	20	\$4.86	\$29.18	1.46	\$25.07	20	\$5.01	\$30.09	1.50	\$26.59	20	\$5.32	\$31.91	1.60
\$32.67	\$20.51	21	\$4.31	\$24.82	1.24	\$21.65	21	\$4.55	\$26.20	1.31	\$23.55	21	\$4.95	\$28.50	1.43	\$24.31	21	\$5.11	\$29.42	1.47	\$25.07	21	\$5.27	\$30.34	1.52	\$26.59	21	\$5.58	\$32.18	1.61
\$33.43	\$20.51	22	\$4.51	\$25.03	1.25	\$21.65	22	\$4.76	\$26.42	1.32	\$23.55	22	\$5.38	\$28.74	1.44	\$24.31	22	\$5.35	\$29.66	1.48	\$25.07	22	\$5.52	\$30.59	1.53	\$26.59	22	\$5.85	\$32.44	1.62
\$34.19	\$20.51	23	\$4.72	\$25.23	1.26	\$21.65	23	\$4.98	\$26.63	1.33	\$23.55	23	\$5.42	\$28.97	1.45	\$24.31	23	\$5.59	\$29.91	1.50	\$25.07	23	\$5.77	\$30.84	1.54	\$26.59	23	\$6.12	\$32.71	1.64
\$34.95	\$20.51	24	\$4.92	\$25.44	1.27	\$21.65	24	\$5.20	\$26.85	1.34	\$23.55	24	\$5.65	\$29.21	1.46	\$24.31	24	\$5.84	\$30.15	1.51	\$25.07	24	\$6.02	\$31.09	1.55	\$26.59	24	\$6.38	\$32.98	1.65
\$35.71	\$20.51	25	\$5.13	\$25.64	1.28	\$21.65	25	\$5.41	\$27.07	1.35	\$23.55	25	\$5.89	\$29.44	1.47	\$24.31	25	\$6.08	\$30.39	1.52	\$25.07	25	\$6.27	\$31.34	1.57	\$26.59	25	\$6.65	\$33.24	1.66
\$36.47	\$20.51	26	\$5.33	\$25.85	1.29	\$21.65	26	\$5.63	\$27.28	1.36	\$23.55	26	\$6.12	\$29.68	1.48	\$24.31	26	\$6.32	\$30.64	1.53	\$25.07	26	\$6.52	\$31.59	1.58	\$26.59	26	\$6.91	\$33.51	1.68
\$37.23	\$20.51	27	\$5.54	\$26.05	1.30	\$21.65	27	\$5.85	\$27.50	1.38	\$23.55	27	\$6.36	\$29.91	1.50	\$24.31	27	\$6.56	\$30.88	1.54	\$25.07	27	\$6.77	\$31.84	1.59	\$26.59	27	\$7.18	\$33.77	1.69
\$37.99	\$20.51	28	\$5.74	\$26.26	1.31	\$21.65	28	\$6.06	\$27.72	1.39	\$23.55	28	\$6.60	\$30.15	1.51	\$24.31	28	\$6.81	\$31.12	1.56	\$25.07	28	\$7.02	\$32.09	1.60	\$26.59	28	\$7.45	\$34.04	1.70
\$38.75	\$20.51	29	\$5.95	\$26.46	1.32	\$21.65	29	\$6.28	\$27.93	1.40	\$23.55	29	\$6.83	\$30.38	1.52	\$24.31	29	\$7.05	\$31.36	1.57	\$25.07	29	\$7.27	\$32.34	1.62	\$26.59	29	\$7.71	\$34.30	1.72
\$39.51	\$20.51	30	\$6.15	\$26.67	1.33	\$21.65	30	\$6.50	\$28.15	1.41	\$23.55	30	\$7.07	\$30.62	1.53	\$24.31	30	\$7.29	\$31.61	1.58	\$25.07	30	\$7.52	\$32.60	1.63	\$26.59	30	\$7.98	\$34.57	1.73

FY 22	AFSCME DOAMC ADULT DETENTION FY 2022 MATRIX eff 12/26/2021															AFSCME - ADULT DETENTION - FY2022 MATRIX														
	PROBATIONARY Detention Officer I					Detention Officer I					Detention Officer I with 3 years service					Detention Officer I with 5 years service					Detention Corporal					Detention Sergeant				
	56% of Sheriff's Base \$44,250.75					59% of Sheriff's Base \$46,121.33					64% of Sheriff's Base - \$50,572.29					66% of Sheriff's Base \$52,152.67					68% of Sheriff's Base \$53,733.06					72% of Sheriff's Base \$56,893.82				
	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%	Hourly Base	Hourly Longevity	Total Hourly	Rate	5%
Rate	Years**	Rate	Rate	Add on	Rate	Years**	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	Rate	Years	Rate	Rate	Add on	
\$79,019.20	\$21.27	0	\$0.00	\$21.27	1.06	\$22.41	0	\$0.00	\$22.41	1.12	\$24.31	0	\$0.00	\$24.31	1.22	\$25.07	0	\$0.00	\$25.07	1.25	\$25.83	0	\$0.00	\$25.83	1.29	\$27.35	0	\$0.00	\$27.35	1.37
\$37.99	\$21.27	1	\$0.21	\$21.49	1.07	\$22.41	1	\$0.22	\$22.64	1.13	\$24.31	1	\$0.24	\$24.56	1.23	\$25.07	1	\$0.25	\$25.32	1.27	\$25.83	1	\$0.26	\$26.09	1.30	\$27.35	1	\$0.27	\$27.63	1.38
Probationary DOI	\$21.27	2	\$0.43	\$21.70	1.08	\$22.41	2	\$0.45	\$22.86	1.14	\$24.31	2	\$0.49	\$24.8																

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

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D. BOXMEYER, DANIEL TILLER, DAN)
MAYLAND, CAROLYN ROBINSON,)
JEFF WADE, SHANE FRANTZ,)
DANIEL SPRINGER, BRIAN GOOTKIN)
and JAMES OBERHOFER,)

Plaintiffs,)

vs.)

GALLATIN COUNTY, a political)
subdivision of the State of)
Montana,)

Defendant.)

BY _____
Cause No. DV ~~07-979C~~
Cause No. DV 09-415C
Cause No. DV 10-729C

ORDER RE: CROSS-MOTIONS
FOR SUMMARY JUDGMENT

47

INTRODUCTION

Plaintiffs are current and former Gallatin County Sheriff's Deputies ("Deputies") who filed a Motion for Partial Summary Judgment on February 27, 2009 ("Deputies' Motion"). Defendant Gallatin County ("County") also filed its Motion for Summary Judgment on February 27, 2009. The cross-motions have been fully briefed, and a hearing was held on the motions on June 25, 2009.

On April 27, 2009, two additional Deputies filed a Complaint against the County alleging substantially similar causes of action in *Tolar and Earl v. Gallatin County*, cause number DV 09-415C ("*Tolar case*"). Five additional Deputies were added as plaintiffs in the *Tolar* case on August 17, 2010. On July 9, 2010, four more Deputies filed a Complaint against the County alleging substantially similar causes of action in *Robinson, Wade, Frantz, and Springer v. Gallatin County* in cause number DV 10-729C ("*Robinson case*"). One additional Deputy was added to the *Robinson* case on July 27, 2010. On September 21, 2010, this Court entered an Order of Consolidation, consolidating all of the cause numbers listed above into one case, at least for liability purposes.

Although this Court's determination of legal issues generally applies to the *Tolar* and *Robinson* plaintiffs, this Order does not rule on the claims of the *Tolar* and *Robinson* plaintiffs.

Having considered all the evidence and being fully advised, this Court now issues the following Order.

FACTUAL BACKGROUND AND POSITIONS OF THE PARTIES

The Deputies brought this action to recover back pay, penalties and attorney's fees for unpaid wages stemming from incorrect calculations made by the County. The Deputies are sworn officers who are, or have been, employed by the County since 2004. As discussed more

fully below, the Deputies' wages are, in large part, tied to the salary paid to the Gallatin County Sheriff ("Sheriff") pursuant to § 7-4-2508(2)(a), MCA.

The Deputies claim the County has miscalculated their wages in four separate ways causing them to be underpaid:

- (1) the County has improperly excluded from the Deputies' wage calculation a raise given to the Sheriff that the County has called a "county longevity payment," and continues to do so (the "County Longevity Issue");
- (2) the County improperly excluded from the Deputies' longevity calculations the \$2000 paid to the Sheriff under § 7-4-2503(2), MCA, although the County corrected the error in July of 2007 (the "\$2000 Issue");
- (3) the County has improperly used a probationary officer's salary in calculating the longevity pay for all deputies, rather than using the Deputies' actual rank, and continues to do so (the "Rank Based Issue"); and
- (4) the County has improperly calculated the Deputies over time pay because of the errors related to the County Longevity and Rank Based Issues.

As a result of the foregoing, the Deputies contend they have not been paid their proper wages and are therefore entitled to recover their unpaid wages, together with the penalties in § 39-3-206, MCA, and their attorney's fees under § 39-3-214, MCA. The Deputies maintain that the issue of whether the County's calculations are erroneous is a question of law and that they are entitled to partial summary judgment in this respect. The Deputies ask the Court to reserve determining the proper amount of damages (back wages), penalties, attorney's fees and costs.

In response, the County contends that all of the Deputies' claims are barred by a specific statute of limitations or the doctrines of laches or waiver. In addition, the County contends that even if the claims are not time barred, the claims have no merit and are unfair. The County requests dismissal of all of the Deputies' claims as a matter of law.

Each of the issues raised by the Deputies, together with the applicable facts and law, is addressed in the order listed above, along with the corresponding defenses offered by the County.

ANALYSIS

I. Legal Standard on Summary Judgment.

The purpose of summary judgment is to eliminate the burden and expense of unnecessary trials by disposing of litigation expeditiously when there are no disputed material facts and judgment as a matter of law is proper. *First Security Bank of Bozeman v. Jones*, 243 Mont. 301 303, 794 P. 2d 679, 681 (1990). Summary judgment is appropriate only when there is a complete absence of genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), M.R.Civ.P.; see *Saucier v. McDonald's Rests. of Mont., Inc.*, 2008 MT 63, ¶ 33, 342 Mont. 29, 179 P.3d 481.

“The party seeking summary judgment bears the initial burden of establishing a complete absence of genuine issues of material fact.” *Saucier*, ¶ 34 (internal citation omitted). To satisfy this initial burden, the moving party must “exclude any real doubt as to the existence of any genuine issue of material fact” by making a “clear showing as to what the truth is.” *Toombs v. Getter Trucking, Inc.*, 256 Mont. 282, 284, 846 P.2d 265, 266 (1993). “[M]ere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact.” *Scanlon v. National Ass'n of Ins. Com'rs.*, 265 Mont. 184, 188-89; 875 P.2d 340, 343 (1994) (citing *Sprunk v. First Bank Systems*, 252 Mont. 463, 830 P.2d 104 (1992)). “Disputed facts are material . . . if they involve the elements of the cause of action or defense at issue to an extent that necessitates resolution of the issue by a trier of fact.” *State Medical Oxygen and Supply Co. v. American Medical Oxygen Co.*, 883 P.2d 1241, 1243, 267 Mont. 340, 344 (1994).

When the moving party alleges there are no genuine issues of material fact and that he is entitled to judgment as a matter of law, the burden shifts to the non-moving party to demonstrate

that there are genuine issues of material fact. *Gwynn v. Cummins*, 2006 MT 239, ¶ 11, 333 Mont. 522, 144 P. 3d 82. The non-moving party must prove, by more than mere denials, speculation or conclusory statements, that a genuine issue of material fact does exist. See Rule 56(e), M.R.Civ.P.; see *Gwynn*, ¶ 11; see *Saucier*, ¶ 34. “Finally, if no genuine issues of material fact exist, it must then be determined whether the facts actually entitle the moving party to judgment as a matter of law.” *Saucier*, ¶ 34 (citing Rule 56(c), M.R.Civ.P.). “A summary judgment... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” Rule 56(c), M.R.Civ.P.

II. Undisputed Facts and Legal Framework.

The Court finds that there are no material facts in dispute with respect to the issues raised in the Deputies’ Motion and the affirmative defenses advanced by the County. Therefore, the question before this Court is whether the Deputies are entitled to judgment as a matter of law on their various claims.

At the time the Deputies filed their Complaint (or Amended Complaint), each Deputy was employed by the County as a sworn sheriff’s deputy. The names, dates of hire and rank of each of the Deputies, as of the date of the Amended Complaint, are set forth on Exhibit C to the Deputies’ Motion and incorporated herein. While the employment status of the Deputies and each of their ranks may have changed since the filing of the Amended Complaint, their current status is not relevant to the decision set forth below, as the primary focus herein is on back wages while they were employed.

Montana has a mandatory statutory framework that determines the compensation of deputy sheriffs. This statutory framework applies to all Montana counties, including Gallatin County. In general, a deputy’s salary is a percentage of a sheriff’s salary. See § 7-4-2508, MCA.

The sheriff's salary is set by the county commission based upon a recommendation by the county's compensation board, plus \$2,000. See § 7-4-2503(1)(a) and (2)(b), MCA. In addition to base salaries, sheriffs and their deputies receive compensation based upon their longevity. Sheriffs receive 1% of their salary multiplied by their years of service as longevity pay. § 7-4-2503(4), MCA. Deputies receive 1% of the "minimum base annual salary" multiplied by their years of service. § 7-4-2510, MCA.

In order to calculate a deputy's base salary one must know the sheriff's salary and the individual deputy's rank. Each deputy rank is entitled to use a different percentage of the applicable sheriff's salary for the purposes of calculating their salaries. In Gallatin County, the percentages are as follows:

Probation	74% of Sheriff's salary (changed to 72% in 2007)
3 rd Class	75% of Sheriff's salary
2 nd Class	78% of Sheriff's salary
1 st Class	82% of Sheriff's salary
Sergeant	85% of Sheriff's salary
Lieutenant	88% of Sheriff's salary
Captain	90% of Sheriff's salary
Undersheriff	95% of Sheriff's salary

See Exhibit D-3 to Deputies' Motion.

Deputies are also entitled to overtime compensation. The County calculates overtime pay at the rate of 1.5% of a deputy's total salary, which is a combination of their base salary, longevity plus any management pay, divided into an hourly amount. See Exhibit G-2 to the Deputies' Motion.

Based upon the foregoing, the starting point for calculating the Deputies' base compensation must be the salary paid to the Gallatin County Sheriff (the "Sheriff"), plus the additional \$2,000.00, less the statutory longevity paid to the Sheriff, in accord with § 7-4-2503(2)(c), MCA. Since 2004, the Sheriff's salary has included the following components:

- (a) the salary recommended by the Gallatin County Compensation Board and adopted by the Gallatin County Commission per § 7-4-2503(a) MCA;
- (b) the \$2,000.00 required under § 7-4-2503(2)(b), MCA;
- (c) the amount for statutory longevity, which is tied to the Sheriff's years of service as required by § 7-4-2503(2)(c), MCA ("Statutory Longevity"); and
- (d) an additional amount called either "elected official longevity" or "county longevity" ("County Longevity"). County Longevity is paid to any Gallatin County elected county official who has held office for more than one year. It does not increase with additional years of service. The amounts paid the various elected officials is reflected on the County's resolutions attached to the Deputies' Motion as Exhibit D-2.

A Deputy's base salary should be determined by simply multiplying the Sheriff's compensation, less Statutory Longevity, by the percentage applicable to the rank of that deputy.

In addition, the Deputies are entitled to their longevity pay, which is computed by taking 1% of the "minimum base annual salary" and multiplying that amount by the individual deputy's number of years of service. § 7-4-2510, MCA. ("Minimum base annual salary" is discussed below.)

Finally, if a Deputy has worked over time in any given pay period, the Deputy is entitled to over time pay calculated by multiplying the hourly rate of the deputy by 1.5. The hourly rate is determined based upon the entire salary of the Deputy (base and longevity), plus management pay, divided by the standard work hours for the week.

Since 2004, the County has failed to include "County Longevity" in the Sheriff's salary for purposes of calculating the Deputies' base salary. In addition, the County has used the percentage applicable to a probationary deputy (74% or 72%) when calculating each and every Deputy's longevity, irrespective of that Deputy's actual rank since 2004. The Deputies contend that the County's failure to include County Longevity and blanket use of the probationary officer's percentage resulted in them being underpaid in violation of the statutory framework

outlined above.

The salaries the Deputies receive (base, longevity, over time) are wages under § 39-3-201 *et seq.*, MCA. The County must pay the Deputies the wages due within 10 business days. § 39-3-204(1), MCA. The County pays the Deputies twice a month. Each time the County fails to properly pay the Deputies, it violates its obligation under § 39-3-204(1), MCA. The Deputies have 180 days from each violation within which to file a complaint to recover their proper wages. § 39-3-207(1), MCA.

The County notes that it has negotiated two agreements with the Deputy Sheriffs' Association (the "Association") during the period at issue in this case: in November of 2005 and again in December of 2007 (collectively the "Negotiated Agreements"). See Exhibit F-3 to Deputies' Motion. The parties, however, did not negotiate the Deputies' salaries/wages as part of the Negotiated Agreements. County Finance Director Ed Blackman stated at the May 22, 2006 County Salary Compensation Committee Meeting:

The [Association] can only negotiate actual wage increases that are outside of state statute. State statute has to be followed for Deputy Sheriffs and the Union doesn't negotiate that portion of it. They don't negotiate for their (deputies) wage increases, but does for their package of benefits that are associated with it. Uniforms, guns, anything they might be needing, including overtime, etc.

Exhibit F-1, at GC 0072, Deputies' Motion. The Negotiated Agreements are thus silent on the issue of the method of calculating the Deputies' salaries.

The Association raised the issue of "County Longevity" in a May 16, 2005 letter to the County and again in a June 13, 2007 letter to the Sheriff. See Deputies' Motion at Exhibit F-2 at GC 0177 and Exhibit F-4. The County refused to discuss the matter, however, and expressly recognized the issue could be raised in another venue. The County's negotiator explained this in a September 1, 2005 Memo under the heading "Basis for Deputy Sheriff Pay" in which she

wrote: "The County recognizes the Associations [sic] rights to pursue this issue in other venues and that for the purposes of negotiations this issue is off the table." See June 24, 2009 Affidavit of Chad Gunlikson. In July, 2007, the County included a paragraph in its annual wage resolution as follows:

WHEREAS, if it is found that any longevity amount is to be included in a base wage for any elected official then the longevity for that elected official shall be eliminated. It is not the intent of the Commission to include county longevity in any base salary or wage of an elected official.

Exhibit D-2, at GC 0137, to Deputies' Motion. Five months later, on December 28, 2007, the Deputies filed their Complaint in this matter.

III. The "County Longevity Issue."

The Deputies contend the Sheriff's "County Longevity" payment is, in reality, a raise which must be included in the Sheriff's salary for purposes of calculating the Deputies' salaries. The Court agrees. By enacting § 7-4-2503, MCA, the Legislature expressly limited a sheriff's salary to three components:

- (a) salary under subsection (1)(a);
- (b) Statutory Longevity under subsection (2)(c); and
- (c) the statutory \$2000 under subsection (2)(b).

County Longevity is not Statutory Longevity, which is a defined calculation. Nor is it the statutory \$2,000. County Longevity must, therefore, be considered part of the "salary" recognized by § 7-4-2503(1)(a), MCA. The Gallatin County Compensation Board recommended the "County Longevity" payment. See Exhibit D-2 to Deputies' Motion.

The County chose to call the raise "longevity" in order to avoid its obligation to pay the Deputies' salaries as required by the statutes. The "County Longevity" raise is given to an elected official who has been in office for more than one year. The official, in this case the Sheriff, receives the same amount irrespective of how long he has been in office. The "County

Longevity" raise is not based upon longevity at all. Rather, the County wanted to give all of its elected officials a raise, including the Sheriff, but did not want to provide the corresponding raises required by the statutes to the Deputies. The County's Finance Director explained this in a May 22, 2006 Salary Compensation Committee Meeting when he said:

In 2004, the Salary Compensation Committee wanted to give a significant increase to elected officials. To do that, they also have to increase the deputies [sheriff] salaries by a similar amount and that was cost prohibitive. So, in order to give elected officials the raise that the Committee felt justified, the decision, after reviewing a number of other counties that had already done it and were in the process of doing it, the longevity was felt to be the best way to go about that. In 2004 the Committee recommended there be a 5% longevity be added to each elected official after one year on the job. In 2005 that was changed to be a 15%, or 9% increase, to raise the salaries of the elected officials up to approximately \$60,000 a year. In 2006 the 14% still existed and it was left at 14%.

See Exhibit F-1, at GC0071, to Deputies' Motion (emphasis added).

The only component of a sheriff's salary properly excluded when calculating a deputy's salary is the Statutory Longevity described in § 7-4-2503(2)(c), MCA ("...The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.") (emphasis added). County Longevity is not described in that subsection and therefore, not excludable for purposes of calculating the Deputies' salaries under § 7-4-2503(2)(c), MCA.

In interpreting § 7-4-2508(2), MCA, the Montana Supreme Court has held that there is nothing in the statute that suggests that the compensation of the Deputy should be based solely on the sheriff's "base salary." "In fact, the statute refers only to basing compensation on the entire salary of that sheriff." *Clouse v. Lewis and Clark County*, 2008 MT 271, ¶ 44, 345 Mont. 208, 190 P.3d 1052 (emphasis added). Here, the entire salary of the Sheriff is the base salary, the County Longevity and the additional \$2,000.00. The error is reflected in the following example, using a sergeant's salary from fiscal year 2005-2006:

INCORRECT METHOD

<i>Sheriff "base" salary 2005-2006 (excludes statutory longevity and "county" longevity)</i>	\$54,187
<i>Sergeant gets 85% of Sheriff</i>	\$46,059

CORRECT METHOD

<i>Sheriff "entire base" salary 2005-2006 (excludes only statutory longevity)</i>	\$61,773
<i>Sergeant gets 85% of Sheriff</i>	\$52,507
<i>For 2005-2006 Sergeant underpaid</i>	<\$6,448>

The County contends that the purpose of County Longevity payments is to reward the Sheriff for his long years of service. The County further contends that it needs the County Longevity payments to recruit and retain qualified personnel. The County argues that including "County Longevity" in the Deputies' pay would unfairly raise the Deputies' compensation based upon the Sheriff's long years of service. The County's argument, however, is not supported by the facts or the law. The Sheriff's "County Longevity" raise is not tied to his years of service. Rather, he receives the same amount whether he is there two years or twenty years. Moreover, the Legislature, through the existing statutory framework, has already determined as a matter of public policy that deputy salaries should be tied to sheriff salaries. This is not unfair.

The County further argues that Deputies' "County Longevity Issue" is time-barred based upon the six month statute of limitation in § 27-2-209(3), MCA, or based upon the equitable doctrines of waiver or laches. These defenses, however, do not apply to the claims before the Court because of the County's improper payments within 180 days of the complaints filed in this case, which continue to this day.

The County has excluded "County Longevity" from the Deputies' salary calculations

from 2004 to date. The original Deputies in this action filed their Complaint on December 28, 2007. Thus, the County underpaid the Deputies within 180 days of the date they filed their Complaint and for nearly three years after they filed their Complaint. Each erroneous payment is a violation of § 39-3-204, MCA. *See also* § 39-2-206, MCA (each violation a misdemeanor). Therefore, the Deputies' claims are timely under § 39-3-207, MCA:

(1) An employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.

(3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

Id. (emphasis added).

The Court need not reach the County's affirmative defenses pled in response to the Deputies' County Longevity issue based upon the plain language of § 39-3-207, MCA. Further, even without that plain language, the County's affirmative defenses would not defeat the Deputies' claims.

Section 27-2-209(3), MCA requires that "claims against a county that have been rejected by the county commissioners must be commenced within 6 months after the first rejection." (emphasis added). There is no evidence that the Gallatin County Commissioners ever saw, let

alone rejected, the Deputies' County Longevity issue at any time before the Deputies filed suit.¹

The County also claims that the Deputies waived their right to recover the back wages on the County Longevity issue. “[W]aiver is a voluntary and intentional relinquishment of a known right, claim or privilege which may be proved by express declarations or by a course of acts and conduct so as to induce the belief that the intention and purpose was to waive.” *Idaho Asphalt Supply v. DOT*, 1999 MT 291, ¶ 19, 297 Mont. 66, 991 P.2d 434 (citing *Kelly v. Lovejoy*, 172 Mont. 516, 520, 565 P.2d 321, 324 (1977)). Waiver must be “manifested in some unequivocal manner.” *Id.*, ¶ 23. “Whether there has been such acquiescence as to defeat the enforcement of a valid restriction depends upon the circumstances of each case and the character and materiality of the permitted breach.” *Id.* The County has failed to demonstrate that the Deputies manifested their desire to waive a known right, claim or privilege in some unequivocal manner. In fact, the County acknowledged the Deputies' right to bring an action in another venue. See Exhibits F-2 and F-4.

Further, as a matter of public policy, the Deputies cannot waive their right to the benefits of a public statute. *Lewis v. B&B Pawnbrokers, Inc.*, 1998 MT 302, ¶ 22, 292 Mont. 82, 968 P.2d 1145; see also *State ex rel. Neiss v. Thirteenth Jud. Dist. Court*, 162 Mont. 324, 511 P.2d 979 (1973) (employees may not bargain away their right to receive statutorily-created minimum wages); *Hoehne v. Sherrodd, Inc.*, 205 Mont. 365, 668 P.2d 232 (1983) (laws establishing an employee's right to receive overtime compensation are for the protection of the general public and may not be waived); *Armendariz v. Foundation Health Psychcare Services, Inc.*, 99 Cal.Rptr.2d 745, 6 P.3d 669 (2000) (against public policy to waive right to redress for sexual

¹ The claim for back wages is not a “claim” within the meaning of this statute. See e.g. *Flynn v. Beaverhead County*, 54 Mont. 309, 170 P. 13 (1917).

harassment or discrimination in employment). The statutory scheme that ties the Deputies' salaries to the Sheriff's salary benefits all deputies in the state of Montana and expresses a public policy in favor of such relationship. The wage statutes (§ 39-3-201, MCA *et seq.*) further require employers to timely pay their employees in full, express benefits afforded to all employees, including the Deputies.² As such, the Deputies could not have waived their rights.

The County contends that the Deputies waived their rights to the "County Longevity" funds by abandoning the claim in the collective bargaining process that resulted in the Negotiated Agreements. The parties, however, did not negotiate the Deputies' wages or salary during the collective bargaining agreement, and the Negotiated Agreements are devoid of any mention of how much the Deputies are to be paid or how their salaries are to be calculated. Even though the Deputies raised the issue with the County's negotiator in 2005, the summary rejection of the issue by the County's negotiator does not amount to a waiver or even negotiations. *See Timkin Roller Bearing Co. v. NLRB*, 325 F.2D 746, 750-751 (6th Cir 1962) (Union asked for information on wage calculations during collectively bargaining, but employer rejected request and the negotiated agreement was silent on the issue. The Court held that silence did not constitute a waiver because the right was not expressly waived in the contract.); *see also Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) (failure to gain express recognition of a right will not evidence a waiver when the collective bargaining agreement is silent on the issue).

The County's laches defense also fails. As noted above, § 39-3-207, MCA, expresses the Legislatures' clear intent to allow employees to bring claims against their employer within 180 days of their last erroneous paycheck and to look back from 2 to 3 years. Further, laches is an

² It is also clear that the Deputies could not expressly waive the rights by agreement because such an agreement would be unenforceable. § 39-3-208, MCA (makes void any express waiver of rights protected by § 39-3-201, MCA, *et seq.*)

equitable defense. *Castillo v. Franks*, 213 Mont. 232, 241, 690 P.2d 425, 429 (1984). The County has not provided any authority for the proposition that a party may lose a statutory right through the application of the laches doctrine. The County must “do equity” in order to seek equity. *See Hall v. Lommasson*, 113 Mont. 272, 291, 124 P.2d 694, 698 (1942) (one who seeks equity must do equity). The County’s consistent refusal to comply with its statutory obligations does not constitute equitable conduct.

It is important to note that laches is not simply a matter of elapsed time, but also a question of the inequity of permitting a claim to be enforced. “Therefore, for laches to apply, the court must find lack of diligence by the party against whom the defense is asserted *and* prejudice to the party asserting the defense.” *Anderson v. Stokes*, 2007 MT 166, ¶ 19, 338 Mont. 118, 163 P.3d 1273 (emphasis in original, citation omitted). Looking at these limitations to a laches defense, *Miller v. Frasure*, 248 Mont. 132, 809 P.2d 1257 (1991), held that laches would not bar a waitress’ claim for higher workers compensation benefits based upon her tips even though she had not reported her tips for more than two years. *Miller* held that the two year delay had not prejudiced the insurer because of the short time frame and the fact that the records were all still available. *See id.*, 248 Mont. at 139 and 809 P.2d at 1261-2.

Finally, the Deputies’ complaints and requests for relief are timely and in accord with the time frame established by the Legislature in § 39-3-207(1), MCA. The parties agree that the County has failed to include the Sheriff’s raise, in the form of County Longevity, when calculating and paying the Deputies. The Deputies received paychecks from the County within 180 days of filing their complaints that did not include the Sheriff’s County Longevity payment, and the Deputies continue to receive paychecks calculated without the Sheriff’s County Longevity payment. As explained above, the County was required to include the Sheriff’s

County Longevity payment when calculating and paying the Deputies. The County has thus violated, and continues to violate, its obligation to pay the Deputies in accordance with § 7-4-2508(2)(a), MCA, and § 39-3-204, MCA. The Deputies timely filed their complaints in accordance with § 39-2-207(1), MCA. For these reasons, the equitable doctrines of laches and waiver do not prevent the Deputies from requesting or being awarded the relief they seek.

Based upon the foregoing, the Deputies are entitled to recover back wages from the County for the amount the County should have paid had it properly included the Sheriff's County Longevity payment in calculating the Deputies' salaries. According to § 39-2-207, MCA, the look back period for recovering back wages is normally two years from the date of the claim, but if the employer has engaged in repeated violations, the look back period is three years. In the case at bar, the County has engaged in repeated violations. Therefore, the appropriate look back period is three years. *Clouse*, ¶ 51. As a result, the Deputies are entitled to back wages on the "County Longevity Issue" from December 28, 2004 until the date of this Order.

IV. The \$2,000.00 Issue.

From 2004 to July 13, 2007, the County failed to include the \$2,000.00 paid to the Sheriff pursuant to § 7-4-2503(2), MCA, in its payments to the Deputies for their longevity. The County first corrected the error in its July 30, 2007 paychecks to the Deputies by including the \$2,000.00 in the calculation for the Deputies' longevity pay. The Deputies' July 13, 2007 paychecks, however, still failed to include the \$2000 element in the Sheriff's salary. See Exhibits D and G to Deputies' Motion. Thus, regarding the \$2000 issue, the last incorrect paychecks were July 13, 2007 and the first correct checks were July 30, 2007. The County has wrongfully refused to pay any back wages to the Deputies for the amounts improperly withheld before July 30, 2007.

The Sheriff's salary used in computing the Deputies' longevity should have included the \$2,000.00. Section 7-4-2503(2)(c), MCA, requires the County to use the Sheriff's entire salary, except Statutory Longevity, for purposes of computing the compensation for the Deputies. *Clouse* confirmed this point and held that the \$2,000.00 must be included in a sheriff's salary in calculating longevity pay for deputies. *Clouse*, ¶ 45.

The County contends that the Deputies' claim for back longevity pay due on the "\$2000 Issue" is barred by the 180 day statute of limitations set out in § 39-3-207, MCA. For support, the County argues that they decided to include the \$2000 in the calculation on June 30, 2007, but the undisputed fact is that the Deputies received paychecks on July 13, 2007 that failed to include the \$2000 element in the Sheriff's salary. *See* Exhibits D and G to the Deputies' Motion. Section 39-3-207(1), MCA, requires a party to file an action "within 180 days of default or delay in the payment of wages." (emphasis added). The original Deputies to this action filed their Complaint on December 28, 2007 - 168 days from the last improper paychecks and well within the 180 day period.

Based upon the foregoing, the original Deputies to this action are entitled to recover back wages from the County for the amount it should have paid had the County correctly included the \$2,000.00 in the sheriff's salary when computing the Deputies' longevity. According to § 39-2-207, MCA, the appropriate look back period is three years because of the repeated violations by the County. *See Clouse*, ¶ 51. As a result, the Deputies are entitled to three years of back wages on the \$2,000.00 Issue; namely from December 28, 2004 to July 30, 2007.

V. The Rank Based Issue.

The Deputies also seek longevity payments based upon their actual rank, as opposed to the rank of a probationary deputy as used by the County. Currently, the County calculates the

Deputies' longevity using 72% of the Sheriff's salary, irrespective of the Deputies' actual rank.

Deputies are entitled to longevity pay pursuant to § 7-4-2510, MCA. That statute entitles the Deputies to "a longevity payment amounting to 1% of the minimum base annual salary for each year of service." (emphasis added). The parties dispute the meaning of the phrase "the minimum base annual salary."

The County contends that the phrase refers to the lowest salary paid to any of the Deputies, i.e. a probationary deputy. The Deputies argue that it means their individual rank based salary, not including their longevity or overtime pay. In other words, the proper way to calculate the longevity payment is to (1) multiply the percentage applicable to the Deputy's rank by the Sheriff's entire salary (the Deputy's minimum base annual salary); (2) multiply that Deputy's minimum base annual salary by 1% (the "Longevity Amount"); and finally (3) multiply the Longevity Amount by the number of years of the Deputy's service. The dispute between the County's and Deputies' methods is reflected in the following example, using a sergeant with 8 years of service for the 2005-2006 fiscal year:

COUNTY'S METHOD

<i>Sheriff's salary 2005-2006</i>	<i>\$52,187</i>
<i>Probationary officer 74%</i>	<i>\$38,618</i>
<i>Multiply by 1% - longevity amount</i>	<i>\$ 386</i>
<i>Multiply by 8 years</i>	<i>\$ 3,088</i>

DEPUTIES' METHOD

<i>Sheriff's salary 2005-2006</i>	<i>\$54,187*</i>
<i>Sergeant 85%</i>	<i>\$46,059</i>
<i>Multiply by 1% - longevity amount</i>	<i>\$ 461</i>
<i>Multiply by 8 years</i>	<i>\$ 3,688</i>
<i>For 2005-2006 Sergeant underpaid</i>	<i><\$ 600>**</i>

* *This salary figure does not include the county longevity, but is used to show the difference in the calculations by just using the rank and \$2000.*

** *With county longevity the sheriff's salary would be \$61,773, the "longevity amount" is \$525, the total due would be \$4,200, reflecting an underpayment to the sergeant of \$1,112, rather than \$600.*

Clouse discussed the meaning of the phrase "the minimum base annual salary" as used in § 7-4-2510, MCA, and concluded that it did not mean the lowest percentage used in the county:

If the legislature had intended to restrict the "minimum base annual salary" to the lowest percentage provided in the salary schedule, it could have made that intent explicit through an internal reference to the lowest applicable percentage found at § 7-4-2508(2)(a), MCA. The absence of this internal reference leads the Court to believe that the Legislature intended to allow counties to continue the practice of negotiating the assignment of base salaries and calculation of longevity based on rank as part of the collective bargaining process.

Clouse, ¶ 31. *Clouse* goes on to explain why fixing a deputy's longevity to the lowest percentage, irrespective of rank, defeated the purpose of longevity:

To base the longevity calculation on seventy-four percent as the minimum base annual salary would result in the number of years that a deputy remains with the County constituting the only factor increasing longevity pay. To apply this seventy-four percent forward also would result in a promoted deputy seeing no increase in longevity arising from that promotion. This interpretation would defeat any incentive within the longevity pay program for a deputy to be promoted or to improve at the job.

Clouse, ¶ 33.

The County contends that the Deputies waived any claim to rank based longevity because they agreed to use the probationary officer's rank as part of the Negotiated Agreements. The County, however, failed to set forth legal authority supporting this argument. To the contrary, the record reflects that the County and Deputies never negotiated the Deputies' salaries³ because

³ The County did negotiate salaries for the unsworn personnel, but not for the Deputies who are plaintiffs in this case.

the County considered the salaries to be set by statute. See Exhibit F-1, at GC0072 at 2:52:57 p.m. entry, to Deputies' Motion. The Affidavit of Cynde Hertzog, the County's human resource director, further confirms that the parties have not negotiated the manner in which the parties calculate the Deputies' longevity because it was not raised. See Affidavit of Cynde Hertzog, dated March 16, 2009, at ¶ 6. The County contends that because the Deputies did not raise the issue in the negotiations, it was waived. The absence of such discussion and such terms in the Negotiated Agreements, however, does not result in waiver. See *Timkin Roller Bearing and Metropolitan Edison Co.*, *supra*.

The Honorable Katherine R. Curtis in the Eleventh Judicial District addressed a substantially similar situation in *Allen v. Flathead County, Montana*, DV 06-904(B), *Order and Rationale on Plaintiffs' Motion for Partial Summary Judgment*, dated November 25, 2008. In *Allen*, the Flathead County deputy sheriffs brought an action to recover back pay and penalties, among other things, on the grounds that their salaries had been miscalculated. One of the miscalculations stemmed from the practice of Flathead County using the "absolute minimum salary that can be earned by any deputy" in that County. *Id.*, p. 5. The deputies in *Allen*, like the Deputies in the present case, argued that longevity should be rank based and not based upon the lowest salary. Judge Curtis agreed and held that the word "minimum" as used in § 7-5-2510, MCA, was "used to ensure that longevity and overtime are not included in the 'base annual salary' upon which longevity is calculated." *Id.*, p. 6. This furthers the "intention of provisions for longevity payments" which "is to aid in the retention of experienced officers by making the job more financially attractive to them the longer they work for the department." See also *Clouse*, ¶ 33.

Finally, *Allen* considered the fact that Flathead County and its deputies had essentially

incorporated verbatim the language of §7-4-2510, MCA, into its collective bargaining agreement. Beyond this, the collective bargaining agreement is silent. Thus, the parties did not negotiate terms differently than the plain language of the statute. Using the plain meaning of the words in the statute and the policy behind longevity, *Allen* concluded that the term “minimum base salary” corresponds to the duty’s rank, as opposed to the lowest available salary. *Allen*, p. 7. Like the deputies in Flathead County, the Deputies in Gallatin County are entitled to the benefit of the plain meaning of the words in the statute and the policy underlying longevity. This Court agrees with the Deputies and the conclusion reached in *Allen* that the phrase “minimum base annual salary” in § 7-4-2510, MCA, means the minimum salary of the individual deputy, based upon his or her rank, and excluding longevity and overtime.

Based upon the foregoing, the Deputies are entitled to back wages for the amounts the County improperly withheld from their longevity pay when it incorrectly used the percentage assigned to the rank of a probationary officer in its calculations. According to § 39-2-207, MCA, the appropriate look back period is three years based upon the County’s repeated violations. As a result, the Deputies are entitled to back wages on the Rank Based issue from December 28, 2004 through the date of this Order.

VI. Overtime Errors

Since the Deputies’ compensation was erroneously calculated and underpaid as set out above, it follows that the County has also incorrectly calculated and underpaid overtime payments to the Deputies. Section 39-3-405(1), MCA, provides for the payment of overtime, as does the Negotiated Agreement between the Deputies and the County. Moreover, all parties agree that the Deputies are entitled to receive 1.5 times their compensation for each hour of overtime worked. The Deputies’ compensation includes their salary, their longevity and any

management pay. *See* Exhibit D-3 to Deputies' Motion. Since the amounts of salary and longevity paid to the Deputies are incorrect, the amount they are being paid for overtime hours is also incorrect.

Therefore, the Deputies are entitled to recover back wages from the County for the amount it should have paid had it correctly calculated the Deputies' salaries and longevity. According to § 39-2-207, MCA, and *Clouse, supra*, the appropriate look back period is three years based upon the repeated violations by the County. The Deputies are entitled to back wages for unpaid overtime from December 28, 2004 until the date of this order.

VI. Penalties and Attorney's Fees.

The Deputies are entitled to an award of penalties for the County's failure to pay them their proper wages. § 39-3-206, MCA. The County contends that it is not subject to the penalty provisions of § 39-3-206, MCA, because that statute only applies to "persons" who fail to timely pay their employees and the County is not a "person" under § 39-3-204, MCA, though it concedes that it is an employer. This argument is clearly without merit.

First, the County is a person under the law. *See also* § 1-1-201(b), MCA (person includes a corporation or other entity); Rule 4(A), M.R.Civ.P ("person" includes a corporation and any other legal entity); § 7-1-2101, MCA (County is a "corporate"); § 7-1-2103(1), MCA (County has power "to sue and be sued"). Second, the operative language in § 39-3-206, MCA, imposes the penalty on an "employer," which the County concedes it is. Finally, *Clouse* held that "Montana law provides for a penalty to be assessed against an employer who fails to pay wages within ten days of when they become due." *Clouse*, ¶ 53. (emphasis added) (penalties awarded against County); *see also* *Kuhr v. City of Billings*, 2007 MT 201, ¶ 29, 338 Mont. 402, 168 P.3d 615 (penalties awarded against city).

In determining the amount of penalties that should be assessed to the County for the repeated violations discussed above, the Court looks to § 39-3-206, MCA, and the corresponding Administrative Rules of Montana. A.R.M. 24.16.7566, provides that the standard penalty for unpaid wages is equal to 55% of the wages determined to be due to the employee. The exception to this rule is found at § 24.16.7556(1)(c), A.R.M., which sets the maximum penalty at 110% of the unpaid wages if the employer has previously violated similar wage and hour statutes within three years prior to the date of filing of the wage claim.

The Deputies contend that, based upon the County's consistent violation of the wage and hour statutes within three years prior to the date of the filing of this wage claim for over 40 Deputies, twice a month since December 28, 2004, even after being asked twice to correct its calculations, the Deputies are entitled to penalties against the County in the amount of 110% of the back wages owed. The County offers no counter percentage, but rather maintains it is not subject to any penalties, as discussed above.

Once the amount of back wages and attorney's fees and costs have been determined, the Court will hold a hearing to determine the appropriate amount of penalties to be awarded the Deputies.

The Deputies are entitled to recover their reasonable attorney's fees and costs incurred in this matter. § 39-3-214, MCA. Costs within this statute mean all costs incurred by the prevailing party, not just those costs as customarily awarded pursuant to § 25-10-201, MCA. *Kuhr*, ¶ 37.

ORDER

THEREFORE, IT IS HEREBY ORDERED:

1. The Deputies' Motion for Partial Summary Judgment is GRANTED on the issue of liability, reserving for later the issue of damages, penalties, fees and costs.

2. The County's Motion for Summary Judgment is DENIED.
3. The County shall calculate and pay the Deputies their salaries in accordance with this Order.
4. The County shall calculate the back wages due to the Deputies as set forth above for the period beginning on December 28, 2004 (3 years prior to filing the Complaint) through the date of this Order (the "Initial Back Wage Calculations"). The Initial Back Wage Calculation shall be done and presented in a manner that shows the back wages owed each of the Deputies, excluding penalties and fees, for each month from December 28, 2004 through the date of this Order.
5. The County shall send its Initial Back Wage Calculations, together with an explanation of how the County calculated the same to the Deputies' counsel, within sixty (60) days of this Order for the Deputies to review for accuracy. The Deputies will have thirty (30) days from receipt of the Initial Back Wage Calculations to accept or challenge the calculations and notify the Court of the same. If the Deputies challenge Initial Back Wage Calculations, the Deputies shall request a hearing to resolve the dispute.
6. If there is no dispute as to the amounts reflected in the Initial Back Wage Calculations, the parties shall submit the same in the form of a stipulation for judgment and the Court will enter judgment in favor of the Deputies and against the County for such amount.
7. The Deputies are entitled to their attorneys fees and costs in accordance with § 39-3-214, MCA. Once the total amount of back wages has been set, the Deputies shall have fifteen (15) days thereafter to submit an affidavit to the County of their attorneys fees and costs. The County shall have ten (10) days from the date it receives the affidavit to notify the Court that it will stipulate to the reasonableness of the amount or that it objects to the amount. If it objects,

the Court will set a hearing to determine the reasonableness of the fees and costs.

8. The Deputies are entitled to penalties pursuant to § 39-3-206, MCA. The Court will hold a hearing on the amount of penalties to be awarded either concurrently with the hearing on attorneys fees or after the fees and costs have been agreed to if there is no hearing on the fees.

Dated this 17th day of December, 2010.


Honorable John C. Brown
DISTRICT JUDGE

c: Jane Mersen/John M. Kauffman *email*
Thomas M. Welsch/Cynthia L. Walker *email*

12-20-10