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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jose Gonzalez,

10 Plaintiff,

11 v.

12 Naumann/Hobbs Material Handling
13 Corporation II Incorporated, et al.,

14 Defendants.

No. CV-16-01346-PHX-DGC

ORDER

15 Plaintiff Jose Gonzalez filed a complaint against Defendants Naumann/Hobbs
16 Material Handling Corporation II, Inc., Bryan Armstrong, and Pamela Armstrong.
17 Doc. 1. Plaintiff seeks declaratory, monetary, and other relief for alleged violations of
18 the Fair Labor Standards Act's ("FLSA") minimum wage and overtime pay requirements.
19 *Id.* Defendants have filed a motion for summary judgment. Doc. 18. The motion is fully
20 briefed (Docs. 18, 27, 29), and oral argument will not aid the Court's decision. For the
21 reasons stated below, the Court will deny Defendant's motion for summary judgment.

22 **I. Background.**

23 Naumann/Hobbs is incorporated and headquartered in Arizona. Doc. 1, ¶ 10. It
24 specializes in providing material handling equipment such as forklifts and other heavy
25 machinery. *Id.*, ¶ 14. Bryan Armstrong is the President, CEO, and owner of the
26 business, as well as the husband of Pamela Armstrong. *Id.*, ¶¶ 11-13. Plaintiff first
27 worked as a partsman for Naumann/Hobbs at Defendants' Yuma, Arizona location. *Id.*,
28 ¶ 15; Doc. 19, ¶¶ 2, 5. In June 2013, Plaintiff was promoted to Counter Sales Manager at

1 Defendants' Mexicali, Mexico facility. Doc. 19, ¶ 5; Doc. 28, ¶ 5. Plaintiff contends that
2 from March 2013 until his termination he regularly worked approximately 48 hours per
3 week, but was not paid overtime. Doc. 19, ¶¶ 2-3; Doc. 28, ¶¶ 2-3.

4 The Job Description of the Counter Sales Manager, attached as Exhibit 2 to
5 Defendant's motion, outlines Plaintiff's duties: (1) "generating counter sales documents
6 daily for all parts request via walk in customers, emails, fax or phone call"; (2)
7 "receiving, unpacking and storing of parts received"; and (3) "active[ly] participat[ing] in
8 achieving the branch goals both sales and operationally." Doc. 19 at 14. The objective
9 of the position was "[t]o actively promote the selling of parts over the counter for both
10 internal and external customers to achieve the goals and performance measures set by
11 management and to meet or exceed the customer's expectations[.]" *Id.*

12 Defendants describe Plaintiff's responsibilities as follows:

13 providing support to company technicians for their parts needs, creating
14 purchase orders to order needed parts from suppliers, placing orders with
15 suppliers, recommending to management adding stock items and
16 controlling inventory, processing parts for entry into the operating system
17 and performing inventory cycle counts, and being responsible for
maintaining the parts warehouse for customers and coworkers.

18 *Id.*, ¶ 9 (emphasis omitted). Additionally, Plaintiff was "involved in transacting business
19 across state lines, including taking new orders from customers, ordering or receiving
20 goods from out-of-state suppliers, handling accounting or bookkeeping for ordering or
21 receiving goods, and handling credit card transactions." *Id.* Plaintiff does not dispute
22 this description, but emphasizes that he "required supervision to perform his employment
23 tasks, and his job responsibilities remained essentially the same [despite his promotion.]"
24 Doc. 28, ¶ 9.

25 **II. Legal Standard.**

26 A party seeking summary judgment "bears the initial responsibility of informing
27 the district court of the basis for its motion, and identifying those portions of [the record]
28 which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*

1 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
2 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is
3 no genuine dispute as to any material fact and the movant is entitled to judgment as a
4 matter of law.” Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a
5 party who “fails to make a showing sufficient to establish the existence of an element
6 essential to that party’s case, and on which that party will bear the burden of proof at
7 trial.” *Celotex*, 477 U.S. at 322. Only disputes over facts that might affect the outcome
8 of the suit will preclude the entry of summary judgment, and the disputed evidence must
9 be “such that a reasonable jury could return a verdict for the nonmoving party.”
10 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

11 **III. Analysis.**

12 “Under the FLSA, certain employers must pay their employees time and a half for
13 work in excess of 40 hours per week[.]” *In re Farmers Ins. Exch., Claims*
14 *Representatives’ Overtime Pay Litig.*, 481 F.3d 1119, 1127 (9th Cir. 2007) (citing 29
15 U.S.C. § 207(a)(1)). The FLSA exempts some employees from its coverage, including
16 Administrative Employees. 29 U.S.C. § 213(a)(1).

17 “The FLSA delegates to the Secretary of Labor broad authority to define and
18 delimit the scope of the administrative exemption.” *In re Farmers*, 481 F.3d at 1127.
19 Regulations from the Secretary state that an individual is considered an Administrative
20 Employee if he meets three criteria. 29 C.F.R. § 541.200(a). Only the third criterion is at
21 issue here – whether Plaintiff is an employee whose “primary duty includes the exercise
22 of discretion and independent judgment with respect to matters of significance.”
23 § 541.200(a)(3). This determination must be made in “light of all the facts involved in
24 the particular employment situation.” 29 C.F.R. § 541.202. The regulations lay out a list
25 of non-exhaustive factors:

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27 [1] whether the employee has authority to formulate, affect, interpret, or
28 implement management policies or operating practices; [2] whether the
employee carries out major assignments in conducting the operations of the

1 business; [3] whether the employee performs work that affects business
2 operations to a substantial degree, even if the employee’s assignments are
3 related to operation of a particular segment of the business; [4] whether the
4 employee has authority to commit the employer in matters that have
5 significant financial impact; [5] whether the employee has authority to
6 waive or deviate from established policies and procedures without prior
7 approval; [6] whether the employee has authority to negotiate and bind the
8 company on significant matters; [7] whether the employee provides
9 consultation or expert advice to management; [8] whether the employee is
involved in planning long- or short-term business objectives; [9] whether
the employee investigates and resolves matters of significance on behalf of
management; and [10] whether the employee represents the company in
handling complaints, arbitrating disputes or resolving grievances.

10 *Id.*

11 Importantly, “[t]he exercise of discretion and independent judgment implies that
12 the employee has authority to make an independent choice, free from immediate direction
13 or supervision. However, employees can exercise discretion and independent judgment
14 even if their decisions or recommendations are reviewed at a higher level.” *Id.*
15 Additionally, “[w]ork must relate to ‘matters of significance,’ in contrast to being
16 ‘clerical’ or ‘routine,’ or simply involving following well-established procedures found in
17 manuals or similar sources.” *Benedict v. Hewlett-Packard Co.*, 314 F.R.D. 457, 476
18 (N.D. Cal. 2016).

19 Defendants contend that the Counter Sales Manager position fits squarely within
20 one of the exemption examples provided in the regulations: “purchasing agents with
21 authority to bind the company on significant purchases.” Doc. 18 at 4 (quoting 29 U.S.C.
22 § 541.203(f)); 29 U.S.C. § 541.203(f). As a result, Defendants contend, Plaintiff “was
23 not entitled to be paid overtime, [and] Defendant is not liable for violating the [FLSA].”
24 Doc. 18 at 3.

25 As Counter Sales Manager, Plaintiff did not have authority to decide company
26 goals or performance measures; they were decided by upper management. Doc. 30-1 at
27 14; Doc. 28-3 at 2. Additionally, while Plaintiff could determine if he wanted to arrive at
28 work early or leave late, he had no influence over the hours of operation of the Mexicali

1 branch. Doc. 30-1 at 26. The hours were determined by upper management. *Id.*
2 Plaintiff had some input in the budget of the Mexicali facility, but the budget was
3 ultimately determined by upper management. *Id.* at 27. Defendants do not provide any
4 evidence that Plaintiff had supervisory control – that he was involved in hiring, firing, or
5 write-ups of other employees. *Id.* Importantly, Plaintiff’s supervisor, Ken McKurdie,
6 testified that, on an average day, the counter sales manager is “looking up the parts and
7 selling the parts [] the majority of the time.” *Id.* at 28. Mr. McKurdie acknowledged that
8 these activities fall within the regular duties of a partsman. *Id.*

9 Defendants rely primarily on several duties Plaintiff assumed upon promotion.
10 First, Plaintiff could adjust the prices at which he sold parts to customers, as long as he
11 maintained a gross profit on each item. *Id.* at 17. Additionally, Plaintiff was expected to
12 review client files and contact customers to make sales, as well as complete inventory
13 cycle counts when instructed by superiors. Doc. 29 at 3, 5. Finally, Plaintiff could order
14 parts from suppliers in response to requests from customers, and he had discretion to
15 stock any inventory sold by the company. *Id.* at 3. The Job Description reflects,
16 however, that Plaintiff could only recommend to upper management that *new* items be
17 stocked or that items be removed from stock. Doc. 28-3. What is more, when asked
18 which of Plaintiff’s duties directly related to the management and general business
19 operations of Naumann/Hobbs, Mr. McKurdie identified “the filing of the parts reqs, and
20 . . . the filing of your returns, keeping basically the records on the parts department.”
21 Doc. 30-1 at 22-23. The regulations make clear, however, that “[t]he exercise of
22 discretion and independent judgment . . . does not include clerical or secretarial work,
23 recording or tabulating data, or performing other mechanical, repetitive, recurrent or
24 routine work. An employee who simply tabulates data is not exempt[.]” 29 C.F.R. §
25 541.202

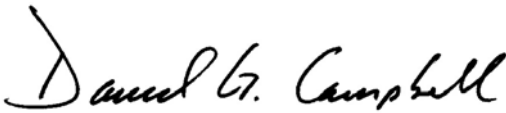
26 These facts, viewed in the light most favorable to Plaintiff, are not sufficient to
27 establish as a matter of undisputed fact that Plaintiff’s “primary duty includes the
28 exercise of discretion and independent judgment with respect to matters of significance.”

1 29 U.S.C. § 541.200(a)(3). Rather, it seems that the majority of Plaintiff's time on an
2 average day was spent looking up and selling parts to customers, a duty shared with the
3 partsmen. Doc. 30-1 at 28. While Plaintiff exercised some discretion as to the types and
4 quantity of stocked items at the Mexicali facility, and as to the price at which some parts
5 were sold, it is not clear that this discretion was substantial or related to matters of real
6 significance. Defendants provide no evidence concerning the financial impact of
7 Plaintiff's decisions on the business as a whole, and it therefore is not possible to
8 determine whether they amount to "matters of significance." *Id.* Nor does the evidence
9 show that Plaintiff carried out major projects for Naumann/Hobbs, or that he could bind
10 the company in ways that would have a significant financial impact.

11 The Court cannot conclude as a matter of undisputed fact that Plaintiff exercised
12 discretion and independent judgment with respect to matters of significance and thus met
13 the third requirement for exemption as an Administrative Employee. The Court therefore
14 must deny Defendants' motion.

15 **IT IS ORDERED:** Defendants' motion for summary judgment (Doc. 18) is
16 **denied.**

17 Dated this 17th day of January, 2017.

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22 David G. Campbell
23 United States District Judge
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