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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Thomas Scott Peterson,  
Plaintiff,  
v.  
Navajo County,  
Defendant.

No. CV-20-08055-PCT-JJT  
**ORDER**

At issue is Defendant Navajo County’s Motion for Summary Judgment (Doc. 67, Mot.) to which Plaintiff Thomas Scott Peterson (“Mr. Peterson”) filed a Response (Doc. 71, Resp.), and Defendant filed a Reply (Doc. 73, Reply). The Court finds this matter appropriate for resolution without oral argument. LRCiv 7.2(f).

**I. FACTUAL BACKGROUND**

Mr. Peterson worked for the Navajo County Sheriff’s Office from September 2009 through January 2020. (Doc. 1, Compl. ¶ 6; Doc. 22, Plaintiff’s Contravening Statement of Material Facts (“PSOF”) ¶ 1; PSOF Ex. 1, Declaration of Thomas Scott Peterson (“Peterson Dec.”) ¶¶ 2-3.) Mr. Peterson worked on the Major Crimes Apprehension Team (“MCAT”) for the duration of his time at the Navajo County Sheriff’s Office, and in January 2018 was promoted from sergeant to lieutenant. (PSOF ¶¶ 2, 10.) As a lieutenant, he worked alongside two sergeants, four detectives, two canine officers, and a secretary. (Compl. ¶¶ 7-8; PSOF ¶ 2.) He reported to the Chief Deputy. (Compl. ¶ 8.)

1 MCAT was divided into teams geographically, based on where the detectives lived.  
2 (PSOF ¶ 3.) As an MCAT sergeant, Mr. Peterson was assigned to the north team. (PSOF  
3 ¶ 7.) His responsibilities entailed “working as a supervisor in the field with his team to  
4 investigate major crimes, apprehend fugitives, interface with various federal law  
5 enforcement agencies, handle informants, perform surveillance, write and execute search  
6 warrants,” and perform evaluations of his team members. (PSOF ¶ 8.) As a sergeant,  
7 Mr. Peterson often worked more than 40 hours per week, and was paid overtime  
8 compensation pursuant to the Fair Labor Standards Act (“FLSA”). (PSOF ¶ 9; *see also*  
9 Doc. 68, Defendant’s Separate Statement of Facts in Support of Motion for Summary  
10 Judgment (“DSOF”) ¶ 13.)

11 When Mr. Peterson was promoted to lieutenant, he was still expected to be out in  
12 the field. (PSOF ¶ 11.) His main duties, which encompassed 80 to 90 percent of his time,  
13 were enforcement-related and included “supervising primarily north team members in the  
14 investigation of narcotic and other major crimes, working with informants, performing  
15 surveillance, apprehending fugitives, writing search warrant affidavits and serving search  
16 warrants, and writing case reports.” (PSOF ¶ 12.) As a lieutenant, Mr. Peterson also  
17 acquired some additional duties beyond those he had as a sergeant. (PSOF ¶ 20.) He  
18 became responsible for both the north and south teams, was required to attend a staff  
19 meeting every other month, was required to submit grant proposals to the Arizona Criminal  
20 Justice Commission (“ACJC”), and was responsible for the accuracy of arrest statistics on  
21 the ACJC website. (PSOF ¶¶ 21-24.) He would also review and approve budget and  
22 performance reports, twice attended High Intensity Drug Trafficking Areas (“HIDTA”)   
23 meetings, met with the HIDTA assistant director approximately every six months, and  
24 could recommend discipline for MCAT members and request equipment for MCAT.  
25 (PSOF ¶¶ 25-30.) During his time as a lieutenant, Mr. Peterson did not receive overtime  
26 compensation. (PSOF ¶ 35.)

27 Mr. Peterson brought the present action in March 2020. (*See Compl.*) In his  
28 Complaint, Mr. Peterson claims that he is entitled to pay for the overtime hours he worked

1 for Defendant as a lieutenant pursuant to the FLSA. (Compl. ¶¶ 15-22.) Defendant now  
2 moves for summary judgment, arguing that Plaintiff is exempt from the FLSA’s overtime  
3 pay requirement.

## 4 **II. LEGAL STANDARD**

5 Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is  
6 appropriate when: (1) the movant shows that there is no genuine dispute as to any material  
7 fact; and (2) after viewing the evidence most favorably to the non-moving party, the  
8 movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*,  
9 477 U.S. 317, 322-23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288-89 (9th  
10 Cir. 1987). Under this standard, “[o]nly disputes over facts that might affect the outcome  
11 of the suit under governing [substantive] law will properly preclude the entry of summary  
12 judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue”  
13 of material fact arises only “if the evidence is such that a reasonable jury could return a  
14 verdict for the nonmoving party.” *Id.*

15 In considering a motion for summary judgment, the court must regard as true the  
16 non-moving party’s evidence, if it is supported by affidavits or other evidentiary material.  
17 *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. However, the non-moving party  
18 may not merely rest on its pleadings; it must produce some significant probative evidence  
19 tending to contradict the moving party’s allegations, thereby creating a material question  
20 of fact. *Anderson*, 477 U.S. at 256-57 (holding that the plaintiff must present affirmative  
21 evidence in order to defeat a properly supported motion for summary judgment); *First Nat’l*  
22 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

23 “A summary judgment motion cannot be defeated by relying solely on conclusory  
24 allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.  
25 1989). “Summary judgment must be entered ‘against a party who fails to make a showing  
26 sufficient to establish the existence of an element essential to that party’s case, and on  
27 which that party will bear the burden of proof at trial.’” *United States v. Carter*, 906 F.2d  
28 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

1     **III. ANALYSIS**

2             **A. A Reasonable Jury Could Conclude that Plaintiff was Not Exempt from**  
3                     **the FLSA’s Overtime Provisions**

4             Congress enacted the FLSA “to protect all covered workers from substandard wages  
5     and oppressive working hours.” *Barrentine v. Arkansas-Best Freight Sys. Inc.*, 450 U.S.  
6     728, 739 (1981). Among the FLSA’s central provisions is its requirement that employers  
7     pay non-exempted workers at one and a half times the regular rate for any time worked in  
8     excess of forty hours in a single week. 29 U.S.C. § 207; *see Tyson Foods, Inc. v.*  
9     *Bouaphakeo*, 136 S. Ct. 1036, 1042 (2016). This provision does not apply to those  
10    employed “in a bona fide executive, administrative, or professional capacity.” 29 U.S.C.  
11    § 213(a).

12            Thus, the first issue the Court must address is whether Plaintiff was properly  
13    classified as exempt. The FLSA mandates that employers pay overtime compensation for  
14    time worked in excess of 40 hours in a week unless an exemption applies. 29 U.S.C.  
15    § 207(a)(1). Whether an exemption applies is a question of law, but the underlying facts  
16    pertaining to an employee’s job duties may involve questions of fact. *See Solis v.*  
17    *Washington*, 656 F.3d 1079, 1083 (9th Cir. 2011). Thus, if no genuine dispute exists as to  
18    an MCAT lieutenant’s job duties, the Court can hold as a matter of law that Plaintiff either  
19    does or does not fall into an exemption.

20            As the employer, Defendant bears the burden of establishing an exemption applies.  
21    *Klem v. Cty. of Santa Clara*, 208 F.3d 1085, 1089 (9th Cir. 2000). The FLSA exemptions  
22    “are to be withheld except as to persons plainly and unmistakably within their terms and  
23    spirit.” *Id.* The criteria in regulations is “absolute,” such that the employer must prove an  
24    employee “meets every requirement before the employee will be deprived of the protection  
25    of the Act.” *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1125 (9th Cir. 2002).

26            Defendant moves the Court for summary judgment, arguing that Plaintiff is not  
27    entitled to overtime pay because, due to his status as a lieutenant, he is exempt from the  
28    FLSA’s overtime pay requirements as an “executive” or “administrative” employee under

1 the Act. (Mot. at 7-8, citing 29 U.S.C. § 212(a)(1) (2000).) Defendant points out that the  
2 Department of Labor’s regulations describe an “executive” as an employee (1) “whose  
3 primary duty is management,” (2) “who regularly directs the work of two or more  
4 employees,” (3) “who has the authority to affect a change in the employment status of his  
5 or her subordinates,” and (4) “who exercises discretion.” (Mot. at 8, citing 29 C.F.R.  
6 § 541.1-541.3.) An administrative employee is defined as an employee (1) “whose primary  
7 duties consist of office or nonmanual work directly related to management policies or  
8 general business operations”; (2) “who customarily and regularly exercises discretion and  
9 judgment,” and (3) “who executes under only general supervision special assignments and  
10 tasks.” (Mot. at 9 (internal quotations omitted).)

11 Plaintiff, on the other hand, argues that the first responder regulation applies in this  
12 case, so Plaintiff is indeed eligible for overtime pay. (Resp. at 5.) The regulation provides  
13 that the exemptions do not apply to

14 police officers, detectives, deputy sheriffs, state troopers,  
15 highway patrol officers, investigators . . . regardless of rank or  
16 pay level, who perform work such as . . . preventing or detecting  
17 crimes; conducting investigations or inspections for violations  
18 of law; performing surveillance; pursuing, restraining and  
19 apprehending suspects; detaining or supervising suspected and  
20 convicted criminals, including those on probation or parole;  
21 interviewing witnesses; interrogating and fingerprinting  
22 suspects; preparing investigative reports; or other similar work.

23 29 C.F.R. § 541.3(b)(1). The regulation further provides:

24 (2) Such employees do not qualify as exempt executive  
25 employees because their primary duty is not management of  
26 the enterprise in which the employee is employed or a  
27 customarily recognized department or subdivision thereof as  
28 required under § 541.100. Thus, for example, a police officer  
or fire fighter whose primary duty is to investigate crimes or  
fight fires is not exempt under section 13(a)(1) of the Act  
merely because the police officer or fire fighter also directs the  
work of other employees in the conduct of an investigation or  
fighting a fire.

(3) Such employees do not qualify as exempt administrative  
employees because their primary duty is not the performance  
of work directly related to the management or general business  
operations of the employer or the employer’s customers as  
required under § 541.200.

1 Under the first responder regulation, federal courts have found high-level police and  
2 fire officials to be exempt employees only where the employee’s primary duty is managerial  
3 or administrative. *See Maestas v. Day & Zimmerman, LLC*, 664 F.3d 822, 826-27 (10th Cir.  
4 2012) (citing 29 CFR § 541.100 (a)(2); § 541 (a)(2); and § 541.200(a)(2)). To determine an  
5 employee’s primary duty, courts consider all the facts of the case as they relate to: (1) the  
6 relative importance of the exempt duties as compared with other types of duties; (2) the  
7 amount of time spent performing exempt work; (3) the employee’s relative freedom from  
8 direct supervision; and (4) the relationship between the employee’s salary and the wages  
9 paid to other employees for the kind of nonexempt work performed by the employee. *Mullins*  
10 *v. City of New York*, 653 F.3d 104, 106-07 (2d Cir. 2011).

11 Defendant argues that the Navajo County Sheriff’s written policies are controlling  
12 when it comes to determining Plaintiff’s primary duty. (Mot. at 3; DSOF ¶ 1.) According  
13 to Defendant, these policies detail which positions qualify for overtime pay. (Mot. at 3.)  
14 Defendant claims that the duties of an MCAT lieutenant are prescribed by a written job  
15 description, which makes clear that a lieutenant is “paid to perform the primary duty of  
16 supervisor and manager, with the primary duty of managing and supervising MCAT in  
17 particular, whether performing those duties in the field or in the office.” (Mot. at 3-4; DSOF  
18 ¶¶ 4-5.) Defendant also observes that Plaintiff was paid a salary and supervised more than  
19 two persons. (Mot. at 10.)

20 Defendant further argues that courts in the Ninth Circuit have found that “police  
21 lieutenants and captains who manage or supervise a defined unit or subdivision of a law  
22 enforcement agency are routinely held to fall into one of the exempt categories.” (Mot.  
23 at 9.) Defendant relies on *Barner v. City of Novato* in making this assertion, where the  
24 Ninth Circuit affirmed the district court’s finding that the plaintiffs had primarily executive  
25 duties following a trial on the merits. 17 F.3d 1256, 1260 (9th Cir. 1994). However, such  
26 a case is not persuasive at the summary judgment stage, where the Court may not draw  
27 factual findings. In *Nolan v. City of Los Angeles*, which Defendant also cites, the court did  
28 not hold that the plaintiffs fell into the exempt category, as Defendant implies. No. CV 03-

1 02190 GAF, 2009 WL 10664754, at \*4-5 (C.D. Cal. Dec. 10, 2009). Rather, the *Nolan*  
2 court determined that “the primary duties of these Plaintiffs *likely* include management  
3 functions sufficient to meet the primary duties tests of both the administrative and  
4 executive exemptions,” and concluded that the addition of the administrative exception to  
5 an amended answer would not be futile. *Id.* (emphasis added). Like in *Barner*, the  
6 procedural posture in *Nolan* is a far cry from that of the instant case.

7 Plaintiff maintains that summary judgment is inappropriate in this case. Plaintiff  
8 argues that the question of which duty is an employee’s primary duty is a question of fact  
9 for a jury. (Resp. at 6.) *See Miller v. Travis County, Texas*, 953 F.3d 817, 820-21 (5th Cir.  
10 2020) (holding that the question of whether lieutenants fell within the scope of the  
11 executive exemption from the FLSA’s overtime requirements was a question of fact for the  
12 jury).

13 Further, Plaintiff points to other factual issues that preclude summary judgment.  
14 Plaintiff argues that neither the title “lieutenant” nor a written job description is dispositive.  
15 (Resp. at 7.) Plaintiff observes that the County has not provided facts to show that he did  
16 not work in the field 80 to 90 percent of the time, although it is undisputed that he “was  
17 required to work alongside his sergeants and detectives in order to assess, manage, and  
18 closely supervise the law enforcement activities of his personnel in investigating major  
19 crimes in Navajo County.” (Resp. at 7, citing DSOF ¶ 28.) Plaintiff claims that his work in  
20 the field is “clearly” non-exempt under the first responder regulation. (Resp. at 7.)

21 Taking the evidence in the light most favorable to Plaintiff—the non-moving  
22 party—the Court finds that genuine issues of material fact remain, rendering this matter  
23 unsuitable for summary judgment. *See Celotex*, 477 U.S. at 322-23. The question of  
24 whether Plaintiff falls within the executive exemption to the FLSA presents issues of fact  
25 for a jury to determine. Accordingly, Defendant’s Motion is denied.

26 **B. Liquidated Damages**

27 Under the FLSA, liquidated damages are mandatory unless the employer shows it  
28 acted in subjective good faith and had objectively reasonable grounds for believing its

1 conduct did not violate the FLSA. *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 920 (9th  
2 Cir. 2003). The employer has the burden to “establish that it had an honest intention to  
3 ascertain and follow the dictates of the Act and that it had reasonable grounds for believing  
4 that its conduct complied with the Act.” *Flores v. City of San Gabriel*, 824 F.3d 890, 905  
5 (9th Cir. 2016) (internal quotations and brackets omitted). The Ninth Circuit describes this  
6 as a “heavy burden,” which involves mixed questions of fact and law. *Id.*

7 Defendant argues that even if Plaintiff is entitled to overtime pay, there is ample  
8 evidence of good faith and reasonableness, so liquidated damages should not be awarded.  
9 (Mot. at 10.) Defendant points out that it works “cooperatively” with human resources,  
10 payroll specialists, and insurers to determine the exempt status of its employees.  
11 (Mot. at 10.) Defendant also claims that Plaintiff’s job description defined his duties, and it  
12 reasonably expected Plaintiff to perform the duties prescribed. (Mot. at 10.) Thus, it was  
13 up to Plaintiff to inform Defendant of what he was doing, but Defendant received no  
14 information suggesting that Plaintiff was not performing his supervisory duties or was  
15 entitled to overtime pay. (Mot. at 10-11.)

16 Plaintiff disputes Defendant’s contention that it acted in good faith. Plaintiff  
17 explains that Cheryl Powell (“Ms. Powell”) was the commanding lieutenant over  
18 administration for the duration of Plaintiff’s employment. (PSOF ¶ 31.) Ms. Powell had  
19 minimal training on the FLSA, but was responsible for determining who was eligible for  
20 overtime compensation based on County policy, sometimes conferring with human  
21 resources, payroll specialists and the insurance office. (PSOF ¶ 32.) Ms. Powell was not  
22 aware of any action taken by any of Defendant’s employees to determine whether Plaintiff  
23 was entitled to overtime pay as MCAT lieutenant. (PSOF ¶ 33, Ex. 8, Deposition of Cheryl  
24 Powell 21:1-9.) For these reasons, Plaintiff argues that the County cannot claim to have  
25 “actively endeavored” to ensure compliance with the FLSA. (Resp. at 9.)

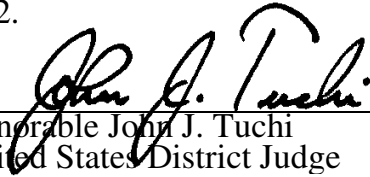
26 The Court agrees with Plaintiff. In *Flores*, the Ninth Circuit found that the plaintiffs  
27 were entitled to liquidated damages, reasoning “[t]hat the payroll department consulted the  
28 human resources department sheds no light on *how* either department determined that the



1 payment's designation as a "benefit" complied with the FLSA." *Flores*, 824 F.3d at 905  
2 (emphasis in original). Here, Defendant's brief discussion of liquidated damages provides  
3 no evidence beyond that discussed in *Flores*. Therefore, Defendant is not entitled to  
4 summary judgment on the issue of liquidated damages.

5 **IT IS THEREFORE ORDERED** denying Defendant's Motion for Summary  
6 Judgment (Doc. 67). The Court will set a pretrial status conference by separate Order.

7 Dated this 31st day of March, 2022.

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10 Honorable John J. Tuchi  
11 United States District Judge  
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