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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

)
)
) DANNY FLORES, ROBERT
) BARADA, KEVIN WATSON, VY
) VAN, RAY LARA, DANE
) WOOLWINE, RIKIMARU
) NAKAMURA, CHRISTOPHER
) WENZEL, CRUZ HERNANDEZ,
) SHANNON CASILLAS, JAMES
) JUST, RENE LOPEZ, GILBERT
) LEE, STEVE RODRIGUES, and
) ENRIQUE DEANDA,
)
)
) Plaintiffs,

) Case No.
) CV 12-04884-JGB (JCGx)

) **ORDER DENYING PLAINTIFFS'**
) **MOTION FOR SUMMARY**
) **JUDGMENT AND SUA SPONTE**
) **GRANTING DEFENDANT**
) **SUMMARY JUDGMENT AS TO**
) **LIQUIDATED DAMAGES**

)
)
) v.

)
) CITY OF SAN GABRIEL, and
) DOES 1 THROUGH 10,
) inclusive,
)
)
) Defendants.)

I. BACKGROUND

On August 29, 2013, the Court issued an order granting Defendant's motion for partial summary judgment and granting in part Plaintiffs' motion for partial summary judgment (hereinafter "Summary Judgment

1 Order").¹ (Summ. J. Order (Doc. No. 37).) In that
2 Order, the Court directed the parties to submit further
3 briefing addressing the issue of liquidated damages.
4 Before the Court is Plaintiffs' supplemental brief on
5 the issue of liquidated damages filed on September 13,
6 2013 in support of Plaintiffs' motion for partial
7 summary judgment. (Doc. No. 38.) Defendant filed an
8 opposition on September 25, 2013. (Doc. No. 39.)
9

10 The Court incorporates by reference the procedural
11 and factual background and the uncontroverted facts as
12 set forth in the Court's Summary Judgment Order.
13 (Summ. J. Order at 1-23.) For the reasons set forth
14 below, the Court denies Plaintiffs' Motion for Partial
15 Summary Judgment on the issue of liquidated damages.
16 The Court sua sponte enters summary judgment in favor
17 of Defendant and holds that Plaintiffs are not entitled
18 to liquidated damages.
19

20 ¹ Specifically, the Court found the following: (1)
21 Defendant's payments to Plaintiffs made in lieu of
22 benefits are not excludable from the regular rate
23 calculation under section 207(e)(2); (2) the payments
24 made in lieu of benefits are also not excludable under
25 section 207(e)(4); (3) to the extent that Defendant
26 makes contributions under the Plan to third parties,
27 these contributions are excludable under 29 U.S.C. §
28 207(e)(4); (4) Plaintiffs' claims are governed by a
29 two-year statute of limitations under 29 U.S.C. §
30 255(a); and (5) Defendant is liable to Plaintiffs for
FLSA overtime only to the extent that Plaintiffs worked
in excess of 86 hours in a 14-day work period since
Defendant implemented a partial overtime exemption
pursuant to section 207(k).

II. LEGAL STANDARD²

1
2
3 Federal Rule of Civil Procedure 56 empowers the
4 Court to enter summary judgment on factually
5 unsupported claims or defenses, and thereby "secure the
6 just, speedy and inexpensive determination of every
7 action." Celotex Corp. v. Catrett, 477 U.S. 317, 325
8 (1986). Summary judgment is appropriate if the
9 "pleadings, depositions, answers to interrogatories,
10 and admissions on file, together with the affidavits,
11 if any, show that there is no genuine issue as to any
12 material fact and that the moving party is entitled to
13 judgment as a matter of law." Fed. R. Civ. P. 56(c).
14 A fact is material when it affects the outcome of the
15 case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
16 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735 (9th
17 Cir. 1997).

18
19 The party moving for summary judgment bears the
20 initial burden of establishing an absence of a genuine
21 issue of material fact. Celotex, 477 U.S. at 323.
22 This burden may be satisfied by either (1) presenting
23 evidence to negate an essential element of the non-
24 moving party's case; or (2) showing that the non-moving
25 party has failed to sufficiently establish an essential
26 element to the non-moving party's case. Id. at 322-23.

27 ² Unless otherwise noted, all references to "Rule"
28 refer to the Federal Rules of Civil Procedure.

1 Where the party moving for summary judgment does not
2 bear the burden of proof at trial, it may show that no
3 genuine issue of material fact exists by demonstrating
4 that "there is an absence of evidence to support the
5 non-moving party's case." Id. at 325. The moving
6 party is not required to produce evidence showing the
7 absence of a genuine issue of material fact, nor is it
8 required to offer evidence negating the non-moving
9 party's claim. Lujan v. National Wildlife Fed'n, 497
10 U.S. 871, 885 (1990); United Steelworkers v. Phelps
11 Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989).

12
13 However, where the moving party bears the burden of
14 proof at trial, the moving party must present
15 compelling evidence in order to obtain summary judgment
16 in its favor. United States v. One Residential
17 Property at 8110 E. Mohave, 229 F. Supp. 2d 1046, 1047
18 (S.D. Cal. 2002) (citing Torres Vargas v. Santiago
19 Cummings, 149 F.3d 29, 35 (1st Cir. 1998) ("The party
20 who has the burden of proof on a dispositive issue
21 cannot attain summary judgment unless the evidence that
22 he provides on that issue is conclusive.")). Failure
23 to meet this burden results in denial of the motion and
24 the Court need not consider the non-moving party's
25 evidence. One Residential Property at 8110 E. Mohave,
26 229 F. Supp. 2d at 1048.

1 Once the moving party meets the requirements of
2 Rule 56, the burden shifts to the party resisting the
3 motion, who "must set forth specific facts showing that
4 there is a genuine issue for trial." Anderson, 477
5 U.S. at 256. The non-moving party does not meet this
6 burden by showing "some metaphysical doubt as to the
7 material facts." Matsushita Elec. Indus. Co., Ltd. v.
8 Zenith Radio Corp., 475 U.S. 574, 586 (1986). The
9 United States Supreme Court has held that "[t]he mere
10 existence of a scintilla of evidence in support of the
11 non-moving party's position is not sufficient."
12 Anderson, 477 U.S. at 252. Genuine factual issues must
13 exist that "can be resolved only by a finder of fact
14 because they may reasonably be resolved in favor of
15 either party." Id. at 250. When ruling on a summary
16 judgment motion, the Court must examine all the
17 evidence in the light most favorable to the non-moving
18 party. Celotex, 477 U.S. at 325. The Court cannot
19 engage in credibility determinations, weighing of
20 evidence, or drawing of legitimate inferences from the
21 facts; these functions are for the jury. Anderson, 477
22 U.S. at 255. Without specific facts to support the
23 conclusion, a bald assertion of the "ultimate fact" is
24 insufficient. See Schneider v. TRW, Inc., 938 F.2d
25 986, 990-91 (9th Cir. 1991).

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III. DISCUSSION

Plaintiffs argue that they are entitled to an award of liquidated damages pursuant to 29 U.S.C. § 216(b) because Defendant failed to meet its burden of establishing that it acted with subjective good faith and had objectively reasonable grounds for believing that its conduct complied with the FLSA. Defendant responds that it has always made a good faith effort to comply with its obligations under the FLSA. In addition, Defendant contends that its determination that the compensation was excludable under section 207(e)(2) was objectively reasonable based on the plain language of that section.

Under section 216(b), an employer who violates section 206 or section 207 of the FLSA is "liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation . . . and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). "These liquidated damages represent compensation, and not a penalty." Local 246 Util. Workers Union of Am. v. S. Cal. Edison Co., 83 F.3d 292, 297 (9th Cir. 1996) (citing Brooklyn Sav. Bank v. O'Neil, 324 U.S. 697, 707 (1945)). "While section 216(b) is mandatory, it is modified by section 260." EEOC v. First Citizens Bank of Billings, 758 F.2d 397, 403 (9th Cir. 1985).

1
2 Under 29 U.S.C. § 260, liquidated damages are
3 mandatory unless "the employer shows . . . that the act
4 or omission giving rise to [the violation] was in good
5 faith and that he had reasonable grounds for believing
6 that his act or omission was not in violation of the
7 [FLSA]." 29 U.S.C. § 260; see Local 246, 83 F.3d at
8 297-298. "This test has both objective and subjective
9 components, asking how a reasonably prudent person
10 would have acted under the same or similar
11 circumstances and requiring that the employer have
12 honesty of intention and no knowledge of circumstances
13 which ought to put him upon inquiry." Alvarez v. IBP,
14 Inc., 339 F.3d 894, 907 (9th Cir. 2003) (internal
15 citations and quotations omitted). "The employer bears
16 the burden of proof to establish this exception." Id.
17 at 907.

18
19 First, the Court finds that Defendant has met its
20 burden of establishing that it acted in subjective good
21 faith. Defendant provided evidence that the payroll
22 department works with the human resources personnel to
23 determine whether a particular pay qualifies as premium
24 pay, includable in the regular rate, or a benefit that
25 is excluded from the regular rate calculation. (Linda
26 Tang Dep. 43:13-46:12, May 1, 2013 (Exh. A to
27 Declaration of Alex Y. Wong).) If the human resources
28 department notices or hears of any new ruling, they

1 notify the payroll department. (Linda Tang Dep. 46:8-
2 10.) When the payments made in lieu of benefits were
3 first implemented, Defendant determined that it was a
4 benefit, classified it as a benefit in its system, and
5 did not include it in calculating overtime. (Linda
6 Tang Dep. 43:17-44:12.) Therefore, Defendant's
7 evidence shows that it implemented steps to ensure it
8 accurately classified payments to be included in the
9 calculation of the regular rate based on the
10 information available to it at the time of
11 implementation. Thus, the Court finds that Defendant
12 was not "blindly operat[ing] without making an
13 investigation as to its responsibilities under the
14 law." Dalheim v. KDFW-TV, 712 F. Supp. 533, 539 (N.D.
15 Tex. 1989). Given the absence of legal authority
16 addressing whether cash payments made in lieu of
17 benefits must be included in the calculation of regular
18 rate of pay, Defendant had no reason to alter its
19 initial determination.

20
21 Plaintiffs cite the Ninth Circuit decision in Chao
22 v. A-One Med. Services, Inc., 346 F.3d 908 (9th Cir.
23 2003) to argue that Defendant failed to present facts
24 that it was acting based on some objective authority or
25 that it, at the very least, sought advice on the
26 legality of excluding substantial direct cash-in-lieu
27 of benefits from the regular rate of pay. However, as
28 Defendant argues, these two methods constitute mere

1 examples rather than an exhaustive list of acceptable
2 methods for demonstrating good faith. Additionally, in
3 Chao, the court found that the employer's violation of
4 the FLSA was willful. Chao, 346 F.3d at 920. The
5 court in Chao noted that "a finding of good faith is
6 plainly inconsistent with a finding of willfulness."
7 Id. Accordingly, the court's finding of willfulness
8 precluded a finding of that the employer acted in good
9 faith. This case is distinguishable from Chao since
10 the Court here previously found that Defendant's
11 violation was not willful. (Summ. J. Order at 46-47.)
12 Accordingly, the Court finds that Defendant acted with
13 subjective good faith in deciding to exclude the
14 payments made in lieu of benefits from the regular rate
15 calculation.

16
17 Second, the Court finds that Defendant had
18 objectively reasonable grounds for believing that its
19 conduct complied with the FLSA. Plaintiffs argue that
20 Defendant's determination was not objectively
21 reasonable since courts have clearly established that
22 payments to employees are not excludable from the
23 regular rate under section 207(e)(2) if they constitute
24 "compensation for work . . . if makes no difference
25 whether the . . . payments are tied to a regular weekly
26 wage or regular hourly wage." (Mot. at 7) (quoting
27 Local 246, 83 F.3d at 296). As noted in the Court's
28 Summary Judgment Order, the Ninth Circuit has not

1 addressed whether payments made to employees out of
2 flexible benefit plans constitute "compensation for
3 work" that must be included in an employee's regular
4 rate for purposes of the FLSA. (Summ. J. Order at 24-
5 25.) In addition, while district courts have addressed
6 whether other payments and benefits are excludable from
7 the regular rate calculation, none has addressed the
8 application of section 207(e)(2) to payments made under
9 flexible benefit plans. Therefore, Defendant did not
10 have knowledge of circumstances which put him upon
11 inquiry that his conduct violated the FLSA.

12
13 Based on the uncontroverted facts, the amount an
14 employee may receive as cash in lieu of benefits is not
15 contingent upon the number of hours worked or the
16 employee's productivity. (Def. SUF, ¶¶ 29-30; Pl. SGD,
17 ¶¶ 29-30.) With little guidance on the issue, it was
18 reasonable for Defendant to classify its payments under
19 the Flexible Benefit Plan as "payments . . . which are
20 not made as compensation for . . . hours of employment
21 . . ." 29 U.S.C. § 207(e)(2). Accordingly, the Court
22 finds that Defendant had reasonable grounds for
23 believing that its conduct complied with the FLSA.

24
25 Since the Court finds that Defendant acted with
26 subjective good faith and had objectively reasonable
27 grounds for believing that its exclusion of payments
28 made in lieu of benefits under the plan was not a

1 violation of the FLSA, the Court finds that Plaintiffs
2 are not entitled to liquidated damages under 29 U.S.C.
3 § 216(b). See Portsmouth Square Inc. v. Shareholders
4 Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985)
5 (citation omitted) (“[S]ua sponte summary judgment is
6 appropriate where one party moves for summary judgment
7 and, after the hearing, it appears from all the
8 evidence presented that there is no genuine issue of
9 material fact and the *non-moving* party is entitled to
10 judgment as a matter of law.”).

11
12 **IV. CONCLUSION**

13
14 For the reasons set forth above, the Court denies
15 Plaintiffs’ Motion for Partial Summary Judgment on the
16 issue of liquidated damages. The Court sua sponte
17 enters summary judgment in favor of Defendant and holds
18 that Plaintiffs are not entitled to liquidated damages.

19
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21 Dated: 10/29/13

22 _____
23 Jesus G. Bernal
24 United States District Judge
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