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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL CHARLES BEIDLEMAN,
Plaintiff,
v.
CITY OF MODESTO,
Defendant.

No. 1:16-cv-01100-DAD-SKO

ORDER GRANTING PLAINTIFF’S MOTION
FOR CONDITIONAL CERTIFICATION,
AND GRANTING THE PARTIES’
STIPULATION REGARDING EARLY
SETTLEMENT CONFERENCE AND
TOLLING OF CLAIMS

(Doc. Nos. 34, 43)

Plaintiff Michael Charles Beidleman is employed as a fire captain for the defendant City of Modesto (“City”). According to the complaint and to plaintiff’s declaration submitted in support of the instant motion, during plaintiff’s employment, the City offered, and plaintiff accepted, the option to receive monetary compensation in lieu of certain City-sponsored health benefits. (Doc. No. 1 (“Compl.”) ¶ 25; Doc. No. 34-3 (“Beidleman Decl.”) ¶¶ 4, 6.) Plaintiff alleges that, for the three years prior to the commencement of this action, the City failed to include these in-lieu payments in its calculation of plaintiff’s regular rate of pay, resulting in an underpayment of overtime compensation. (Compl. ¶¶ 26; Beidleman Decl. ¶ 8.) Plaintiff further alleges that defendant’s failure to fully compensate him and others similarly situated constitutes a violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”). *See Flores v. City*

1 of *San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) (holding that cash payments in lieu of health
2 benefits “must be included in the regular rate of pay and thus in the calculation of the overtime
3 rate” under the FLSA).

4 On February 16, 2017, plaintiff filed a motion for conditional certification and facilitated
5 notice under the FLSA. (Doc. No. 34.) On March 7, 2017, defendant filed its opposition. (Doc.
6 No. 39.) Therein, defendant indicated that it does not oppose conditional certification but rather
7 sought to stay proceedings in this case pending the completion of a proposed court-ordered early
8 settlement conference. (*See id.* at 1–2.) On March 14, 2017, plaintiff filed his reply. (Doc. No.
9 40.)

10 A hearing on the motion was held on March 21, 2017. Attorney Ace T. Tate appeared on
11 behalf of plaintiff, and attorney Kevin P. McLaughlin appeared on behalf of defendant. As
12 discussed at the hearing, the parties thereafter filed a stipulation regarding participation in an
13 early settlement conference and the tolling of claims. (Doc. No. 43.) Having considered the
14 parties’ briefs and oral arguments and for the reasons set forth below, the court will grant
15 plaintiff’s motion for conditional certification and adopt the parties’ stipulation.

16 **CONDITIONAL CERTIFICATION**

17 Pursuant to the FLSA, an employee may file a civil action, on behalf of himself and other
18 employees similarly situated, against an employer that fails to adhere to federal minimum wage
19 and overtime law. 29 U.S.C. § 216(b); *see also Genesis Healthcare Corp. v. Symczyk*, 569 U.S.
20 ___, 133 S. Ct. 1523, 1527 (2013). Unlike a class action brought under Rule 23 of the Federal
21 Rules of Civil Procedure, similarly situated employees can join an FLSA collective action only if
22 they opt-in by giving written consent to be joined. 29 U.S.C. § 216(b).

23 The FLSA does not define the term “similarly situated,” and this court finds no binding
24 Ninth Circuit or Supreme Court authority interpreting that term. Accordingly, district courts in
25 this circuit have used a two-step approach to decide whether potential FLSA plaintiffs are
26 similarly situated. *See, e.g., Kellgren v. Petco Animal Supplies, Inc.*, No. 13CV644 L KSC, 2015
27 WL 5167144, at *2 (S.D. Cal. Sept. 3, 2015); *Syed v. M-I, L.L.C.*, No. 1:12-cv-01718-AWI-MJS,
28 2014 WL 6685966, at *2 (E.D. Cal. Nov. 26, 2014); *Troy v. Kehe Food Distributors, Inc.*, 276

1 F.R.D. 642, 649 (W.D. Wash. 2011); *Lewis v. Wells Fargo Co.*, 669 F. Supp. 2d 1124, 1127
2 (N.D. Cal. 2009); *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 467–68 (N.D. Cal. 2004);
3 *Wynn v. National Broad. Co.*, 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002). In the first step,
4 district courts may conditionally certify the proposed class based on consideration of the parties’
5 pleadings and affidavits. *Leuthold*, 224 F.R.D. at 467. This determination is made under a
6 “lenient standard”—requiring a preliminary determination that notice is appropriate and that “the
7 putative class members were together the victims of a single decision, policy, or plan.” *Lewis*,
8 669 F. Supp. 2d at 1127 (citing *Thiessen v. General Elec. Capital Corp.*, 267 F.3d 1095, 1102
9 (10th Cir. 2001)). “The sole consequence of conditional certification is the sending of court-
10 approved written notice to employees.” *Genesis Healthcare*, 133 S. Ct. at 1530 (citing
11 *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171–72 (1989)). District courts have the
12 authority to facilitate notice to potential plaintiffs and may set a deadline for plaintiffs to opt in.
13 *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000) (citing
14 *Hoffmann-La Roche*, 493 U.S. at 169). In the second step, after class members have opted in and
15 discovery has taken place, the party opposing class certification may seek to decertify the class.
16 *Leuthold*, 224 F.R.D. at 467.

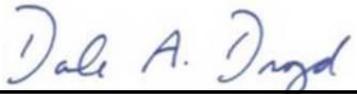
17 Plaintiff Beidleman has met his burden of showing at the first step that conditional
18 certification is warranted. At this stage in the litigation, plaintiff proposes, and defendant does
19 not oppose, defining those “similarly situated” as “any and all current or former employees of the
20 City of Modesto in the job classifications of firefighter trainee, firefighter, fire engineer and fire
21 captain who have worked overtime and received cash payments in lieu of health care benefits
22 within the same pay period at any time since July 28, 2013.” (Doc. No. 34-4 at 1; *see also* Doc.
23 Nos. 34-1 at 4; 39 at 1.) Plaintiff contends that his decision to receive monetary compensation in
24 lieu of health benefits is part of a broader uniform City policy affecting other fire department
25 employees. (*See* Beidleman Decl. ¶¶ 9–10.) In addition, based on plaintiff’s personal knowledge
26 and belief, the City similarly excludes such in-lieu compensation from its calculation of regular
27 rates of pay for purposes of overtime compensation. (*Id.* ¶ 10.) Based on these representations,
28 the court is satisfied and accordingly grants conditional certification of the proposed class.

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- 8. The claims of any potential plaintiff shall be tolled from the date of entry of this order up to and through the date of the settlement conference.
- 9. No formal discovery will be conducted up to and through the date of the settlement conference; however, upon request, defendant shall informally provide to plaintiff all data and information necessary for plaintiff to analyze the claims of the collective action and to effectively participate in the settlement conference.

IT IS SO ORDERED.

Dated: March 30, 2017


UNITED STATES DISTRICT JUDGE