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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASON FEIN, on behalf of himself and
all similarly situated individuals,

Plaintiff,

v.

CITY OF BENICIA,

Defendant.

No. 2:16-cv-01461-MCE-CKD

MEMORANDUM AND ORDER

Presently before the Court is Plaintiff’s Renewed Motion for Conditional Certification and Facilitated Notice, ECF No. 22, under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201–19. Plaintiff previously moved for conditional certification and facilitated notice, ECF No. 6, but that motion was denied for failure to “meet the lenient standard for conditional certification,” ECF No. 12, at 4. Plaintiff has now met his burden as set forth below, and his motion is accordingly GRANTED. ¹

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¹ Having determined that oral argument would not be of material assistance, the Court ordered the motions submitted on the briefs in accordance with Local Rule 230(g).

1 **BACKGROUND²**

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3 Plaintiff Jason Fein is a fire captain employed by Defendant City of Benicia. As
4 part of his compensation, Plaintiff has the option of declining health benefits and
5 receiving cash instead. Plaintiff has exercised this option. In this lawsuit, Plaintiff
6 alleges that his “regular rate” of pay for purposes of calculating overtime compensation
7 under the FLSA should have, but did not, include these cash-in-lieu-of-health-benefits
8 payments. That is, Plaintiff contends he was underpaid for overtime work, which is to be
9 paid at one-and-a-half times his regular rate of pay.

10 Plaintiff is party to a collective bargaining agreement, and thus his fellow
11 employees were given the same option. Plaintiff therefore contends that his fellow fire
12 captains are “similarly situated” under the FLSA if they also opted for cash in lieu of
13 health benefits and worked overtime. Plaintiff also identifies four other collective
14 bargaining agreements—called memorandums of understanding (“MOUs”)—in force
15 between Defendant and other types of workers that contain similar options to collect
16 cash instead of health benefits. Accordingly, Plaintiff claims that employees subject to
17 these other MOUs who also opted for cash in lieu of health benefits and worked
18 overtime are “similarly situated” under the FLSA.

19 In light of these arguments, Plaintiff seeks conditional certification of the following
20 class under the FLSA: “any and all current or former employees of the City of Benicia
21 who have worked overtime and received cash payments in lieu of health care benefits
22 within the same pay period at any time since June 27, 2013.” Pl.’s Renewed Mot. for
23 Conditional Certification (“Pl.’s Mot.”), ECF No. 22, at 1.

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27 ² Unless otherwise noted, the allegations in this section are drawn directly, and in some cases
28 verbatim, from the allegations of Plaintiff’s Complaint.

1 subject to' Defendant's allegedly unlawful payment scheme and his attorney's
2 declaration that he is 'informed and believe[s]' that other City employees fit into the
3 proposed class." Mem. & Order, at 4. The Court denied that motion because "Plaintiff
4 ha[d] not specifically identified a single other potential plaintiff and thus c[ould not] meet
5 the lenient standard for conditional certification." Id.; see also Adams, 242 F.R.D. at 536
6 ("[T]he named plaintiff must demonstrate that there existed at least one similarly situated
7 person . . .").

8 To remedy the defects of his prior motion, Plaintiff now provides declarations from
9 other firefighters that they received cash in lieu of health benefits, worked overtime, and
10 did not have those cash payments figured into their regular rate of pay for overtime pay
11 calculation purposes. See Decl. of Carl Littorno, ECF No. 22-4; Decl. of David Calkins,
12 ECF No. 22-5; Decl. of Drake Martin, ECF No. 22-6; Decl. of Gregory Peterson, ECF
13 No. 22-7. Plaintiff also provides declarations from police officers—who are governed by
14 a different one of the five MOUs the City has with its various employees—who were also
15 subject to this allegedly unlawful practice. See Decl. of Majonne Roberson, ECF
16 No. 22-8; Decl. of Sergio Cruz, ECF No. 22-9. Plaintiff argues that these declarations
17 demonstrate "Defendant uniformly applies [the challenged] policy to all current and
18 former employees regardless of job classification, bargaining unit[,] or whether they were
19 covered by a collective bargaining agreement or not." Mem. of P. & A. in Supp. of Pl.'s
20 Mot., ECF No. 22-1, at 5. Thus, he contends he has "satisf[ied] the standard of being
21 'similarly situated' to the currently named Plaintiff." Id.

22 Defendant initially opposes the motion on procedural grounds. He claims that
23 "there is nothing in the [Court's prior] Order authorizing a 'renewal' of the Original
24 Motion"; the instant motion should be construed as a motion for reconsideration; and that
25 Plaintiff has failed to meet the standard for reconsideration. Def.'s Opp'n to Pl.'s Mot.,
26 ECF No. 24, at 2. These arguments are unavailing as "[d]etermining whether a
27 collective action is appropriate is within the discretion of the district court," Leuthold v.

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1 Destination Am., Inc., 224 F.R.D. 462, 466 (N.D. Cal. 2004), and the Court nowhere in
2 its prior order specified that the prior motion was denied with prejudice.

3 Moving to the substance of the motion, Defendant opposes conditional
4 certification on the basis that the question of overtime pay calculation is “one of
5 individualized application—across several different bargaining groups composed of
6 several different bargaining groups composed of several different jobs which are
7 completely unrelated.” Def.’s Opp’n to Pl.’s Mot., at 8. Essentially, Defendant argues
8 that the Court apply the “hybrid” approach described above, which, beyond requiring a
9 common policy or practice, looks also to whether the work duties of the class members
10 are sufficiently similar. See, e.g., Tradesmen Int’l, 289 F. Supp. 2d at 1372. However,
11 this Court adopts the approach that requires the plaintiff only provide evidence that
12 “show[s] there is ‘some factual nexus which binds the named plaintiffs and the potential
13 class members together as victims of a particular alleged [policy or practice].” Felix v.
14 Davis Moreno Const., Inc., No. CV F 07-0533 LJO GSA, 2008 WL 4104261, at *5 (E.D.
15 Cal. Sept. 3, 2008) (second alteration in original) (quoting Bonilla v. Las Vegas Cigar
16 Co., 61 F. Supp. 2d 1129, 1139 n.6 (D. Nev. 1999)).

17 Plaintiff here challenges Defendant’s alleged policy of not including cash received
18 in lieu of health benefits in employees’ regular rate of pay when calculating overtime.
19 Plaintiff has submitted declarations from employees other than himself who received
20 such cash payments, worked overtime, and whose overtime pay was calculated in the
21 same manner as Plaintiff alleges his was. Additionally, Plaintiff has provided
22 declarations from employees subject to a different MOU indicating that they, too,
23 received cash in lieu of health benefits that was not factored into their overtime pay.
24 This indicates that the challenged policy is not limited to fire captains, but instead applies
25 to all employees who are under an MOU that provides the option to receive cash in lieu
26 of health benefits. Accordingly, Plaintiff has met his lenient burden to receive conditional
27 certification of his proposed class.

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CONCLUSION

For the reasons above, Plaintiff's Renewed Motion for Conditional Certification and Facilitated Notice, ECF No. 22, is GRANTED.

1. The Court preliminarily certifies an FLSA collective action for:

All current or former employees of the City of Benicia who have worked overtime and received cash payments in lieu of health care benefits within the same pay period at any time since June 27, 2013; and

2. Directs that the parties submit a joint proposal for notice to the class, or separate statements as to why no such joint proposal could be reached within thirty (30) days of the date of this order.

IT IS SO ORDERED.

Dated: August 31, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE