UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RONALD PELHAM, **Plaintiff,** **v.** **CITY OF MONROVIA,** **Defendant.**	**Case No.: CV 18-08110-CJC-E** **ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF FLSA SETTLEMENT [Dkt. 25]**

I. INTRODUCTION & BACKGROUND

On September 19, 2018, Plaintiff Ronald Pelham filed this action against his former employer, the City of Monrovia (the "City"). (Dkt. 1 [Complaint, hereinafter "Compl."].) Plaintiff worked as an hourly-paid firefighter for the City's Fire Department from approximately August 1989 to September 2018. (Mot. at 1.) When he retired, he was serving as the Division Chief. (*Id.*) According to Plaintiff, the City failed to pay him

overtime compensation for the hours he worked in excess of a forty-hour workweek. (Compl. ¶¶ 16–22.) He asserts one claim under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*., for unpaid overtime wages for the last three years of his employment. The City agrees that Plaintiff at times worked more than forty hours per week. (*See* Dkt. 10 [Answer] at 2.) However, it argues that fire chiefs are exempt from the FLSA's overtime provisions under controlling case law. (*See id*. at 3.)

Following a month-long negotiation process, the parties entered into a settlement agreement (the "Settlement Agreement"). (Dkt. 28 Ex. 1 [Settlement Agreement].) It provides for a total settlement amount of $115,000, which includes overtime wages, penalties, and attorneys' fees and costs. (*See generally id*.) Before the Court is Plaintiff's unopposed motion for approval of the Settlement Agreement. (Dkt. 25 [hereinafter "Mot."].) For the following reasons, the motion is **GRANTED**.[1]

II. DISCUSSION

The Fair Labor Standards Act ("FLSA") was enacted "to protect all covered workers from substandard wages and oppressive working hours." *Barrentine v. Ark.-Best Freight Sys., Inc*., 450 U.S. 728, 739 (1981). It requires employers to pay their employees time and one-half for work exceeding forty hours per week. *See* 29 U.S.C. § 207(a)(1). Employees who work in a "bona fide executive, administrative, or professional capacity," however, are exempt from this requirement. *See* 29 U.S.C. § 213(a)(1). Because the FLSA "is to be liberally construed to apply to the furthest reaches consistent with Congressional direction," its exemptions are "narrowly construed." *Klem v. Cty. of Santa Clara,* 208 F.3d 1085, 1089 (9th Cir. 2000) (internal

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for July 22, 2019, at 1:30 p.m. is hereby vacated and off calendar.

quotation marks and citations omitted). An "employer who claims an exemption from the FLSA has the burden of showing that the exemption applies." *Donovan v. Nekton, Inc.,* 703 F.2d 1148, 1151 (9th Cir. 1983).

An employee may not settle and release his FLSA claim against an employer without the approval of either the Secretary of Labor or a district court. *Seminiano v. Xyris Enter., Inc*., 602 F. App'x 682, 683 (9th Cir. 2015); *see* 29 U.S.C. §§ 216(b), (c). The Ninth Circuit has not set forth specific criteria for courts to consider when evaluating an FLSA settlement. District courts in this circuit frequently rely on the Eleventh Circuit's standard in *Lynn's Food Stores v. United States*, 679 F.2d 1350 (11th Cir. 1982). *Dunn v. Teachers Ins. & Annuity Ass'n of Am*., 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016). Under that standard, a court cannot approve an FLSA settlement unless (1) the employee's claim involves a "bona fide dispute" over FLSA liability, and (2) the settlement is a fair and reasonable resolution of that dispute. *Lynn's Food Stores*, 679 F.2d at 1353. "A bona fide dispute exists when there are legitimate questions about the existence and extent of [the defendant's] FLSA liability." *Kerzich v. Cty. of Tuolumne*, 335 F. Supp. 3d 1179, 1184 (E.D. Cal. 2018) (citation omitted).

The Settlement Agreement involves a bona fide dispute over Plaintiff's coverage under the FLSA. Counsel have conducted a thorough investigation of Plaintiff's claim through informal discovery. (Dkt. 25-1 [Declaration of Justin F. Marquez, hereinafter "Marquez Decl."] ¶ 15.) They have reviewed Plaintiff's timekeeping and payroll records and the City's policy manuals and handbooks. (*Id*. ¶ 16.) Over the course of a month-long negotiation process, they debated the strengths and weaknesses of Plaintiff's case. (*Id*. ¶ 17.) The City continues to argue that Plaintiff's position as Division Chief renders him exempt from overtime pay under controlling case law. *See, e.g*., *McGuire v. City of Portland*, 159 F.3d 460, 464 (9th Cir. 1998) (finding battalion chiefs FLSA-exempt, even though their employer counted their time on an hourly basis). Indeed, a firefighter chief

who filed a similar FLSA action for unpaid overtime in the Western District of Washington lost on the merits during the pendency of this action. (*See* Dkt. 32-1 [Declaration of Ronald Pelham] ¶ 4 [citing *Tracey v. Vancouver*, Case No. 3:17-cv-05415-RBL (W.D. Wash.)].) Plaintiff, by contrast, contends that FLSA regulations explicitly provide that white-collar exemptions do not apply to firefighters. *See* 29 C.F.R. § 541.3(b)(1) (stating that white-collar exemptions "do not apply to . . . fire fighters . . . regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type . . ."). There remains the "legitimate question" of whether Plaintiff is exempt from FLSA's overtime provisions.

The Court next considers whether the Settlement Agreement reflects a fair and reasonable resolution of Plaintiff's claim. In making this determination, district courts in this circuit have adopted a "totality of [the] circumstances approach that emphasizes the context of the case and the unique importance of the substantive labor rights involved." *Selk v. Pioneers Mem'l Healthcare Dist*., 159 F. Supp. 3d 1164, 1173 (S.D. Cal. 2016). This approach considers many of the factors relevant to Rule 23 class action settlements, including the plaintiff's range of possible recovery, the stage of proceedings, the seriousness of the litigation risks, the experience and views of counsel, and the possibility of fraud or collusion. *Id*. Ultimately, the Court must be "satisfied that the settlement's overall effect is to vindicate, rather than frustrate, the purposes of the FLSA." *Kerzich*, 335 F. Supp. 3d at 1185 (quoting *Selk*, 159 F. Supp. 3d at 1173).

The totality of the circumstances support approval of the Settlement Agreement. Plaintiff seeks both unpaid overtime wages and liquidated damages under the FLSA. Based on timekeeping and payroll records in his last three years of employment, Plaintiff's expert estimates that he worked 270 hours of overtime in 2015, 1,388.50 hours of overtime in 2016, 1,384.25 hours of overtime in 2017, and 920 hours of overtime in 2018. (Marquez Decl. ¶ 8.) If deemed non-exempt, he was entitled to $97,890.89 in

overtime pay during that period. (*Id*.) The City, however, only paid him a total of $16,529.95 in overtime pay during those years. (*Id*.) Accordingly, if Plaintiff prevailed, he would receive $81,360.94 in unpaid overtime. (*Id*.) When combined with an equal amount in liquidated damages, Plaintiff could recover a maximum of $162,721.88. (*Id*.) Of the $115,000 settlement amount, Plaintiff will receive $72,969.40. (Dkt. 32 [Pl.'s Sur-Reply] at 1.) This reflects 45% of his maximum possible recovery and 89% of his unpaid overtime wages. In light of the significant disputes over FLSA coverage of fire battalion chiefs, the Court finds this figure a fair and reasonable proportion of Plaintiff's possible recovery. There is no evidence before the Court that it was reached through fraud or collusion.

The remaining settlement amount will be apportioned to attorneys' fees and costs based on a 35% contingency fee. "Designating a portion of a settlement as attorneys' fees is appropriate and commonplace in the context of the FLSA." *Kerzich*, 335 F. Supp. 3d at 1185; *see* 29 U.S.C. § 216(b) (entitling prevailing party to attorneys' fees from opposing party). Because Plaintiff's settlement amount specifically incorporates an award of attorneys' fees, the Court considers that award when determining whether the settlement is fair and reasonable. Here, Plaintiff's counsel will receive $40,250 in attorneys' fees and $1,780.60 in costs. The fee award is less than the lodestar amount ($42,747.50), reflecting a negative multiplier. The Court finds this amount fair, given the quality of counsel and Plaintiff's obstacles to prevailing on the merits. (*See* Dkt. 32-2 [Supplemental Declaration of Justin F. Marquez] ¶¶ 10–18.)

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III. CONCLUSION

For the foregoing reasons, Plaintiff's motion for approval of his FLSA settlement is **GRANTED**. A judgment consistent with this order shall be issued forthwith.

DATED: July 15, 2019

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE