APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-20562

BRENT HEBERT,
Plaintiff-Appellant,
AARON MOHAMMED,
Appellant,

—vs.—

FMC TECHNOLOGIES, INCORPORATED,
Defendant-Appellee.

Filed: June 21, 2023

Before: JOLLY, OLDHAM and WILSON, *Circuit Judges*.

OPINION

E. GRADY JOLLY, *Circuit Judge*:[*]

Brent Hebert, formerly an "installation engineer" with FMC Technologies, Inc. ("FMC"), contends that he is owed overtime pay under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207. He appeals the district court's

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

grant of summary judgment in favor of FMC, arguing that the district court erred when it determined that his position fell under the "learned professional" exemption of the FLSA's overtime requirement. For the reasons set forth below, we AFFIRM.

I.

FMC is a global offshore oil and gas equipment and service company. It employs installation engineers. Their responsibilities, requirements, and remuneration are particularly important in this appeal. FMC requires a bachelor's degree in an engineering field for its installation engineers. According FMC's job description of installation engineers, they "provide[] support for testing, installation, intervention, and recovery of subsea equipment." Their main tasks are to "plan, create technical procedures, create equipment lists, provide on-site technical [support], and write the post activity technical report." Stated differently, these engineers work in office environments and occasionally visit offshore sites to assist with the installation of FMC equipment. Their work in the office largely consists of planning and preparing for installing the complex subsea drilling equipment that FMC sells. Their work "in the field" consists of providing on-site technical support and troubleshooting during the installation process. FMC pays its installation engineers both (1) a biweekly salary that does not change based on the days or hours worked, and (2) a "field service premium" on top of their salaries for days spent working at an offshore site.

Brent Hebert worked as an installation engineer at FMC from 2013 to 2020. Consistent with FMC's requirement, Hebert holds a bachelor's degree in mechanical engineering. While at FMC, Hebert spent over half of his time in the office planning and reviewing installation projects. He also provided on-site technical support for issues and troubleshooting during the installation process for FMC's equipment. If any issues were discovered during installation, Hebert assisted with analyzing those issues and designing solutions to them. Occasionally, Hebert's on-site work required manual labor. Once a project was complete, Hebert and his team then conducted in-office reviews of that project. It is undisputed that FMC paid Hebert a salary and that Hebert received a field service premium for days he spent working at offshore sites.

Hebert filed this lawsuit alleging that FMC owed him overtime pay under the FLSA because FMC improperly classified him as an exempt employee. FMC filed a motion for summary judgment, arguing that the evidence established that Hebert was exempt from the FLSA's overtime requirements under the "learned professional exemption." The district court granted FMC's motion and dismissed Hebert's complaint with prejudice. This appeal followed.[1]

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[1] Aaron Mohammed—whose name appears in the caption of this appeal, but nowhere else—submitted a consent to opt-in to a class under the FLSA in the district court. The district court declined to certify a class, noting that Hebert and Mohammed were not similarly situated employees. Hebert and Mohammed did not present any issue related to the district court's certification decision in their

II.

We review the district court's grant of summary judgment de novo, employing the same standards as the district court. *Owsley v. San Antonio Indep. Sch. Dist.*, 187 F.3d 521, 523 (5th Cir. 1999) (citation omitted). Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

III.

Under the FLSA, employers must pay overtime compensation to covered employees who work more than forty hours per week. 29 U.S.C. § 207. That said, employers are not required to pay overtime to employees who work in a "bona fide executive, administrative, or professional capacity." 29 U.S.C. § 213(a)(1). The "professional capacity" part of this exemption—otherwise known as the "learned professional exemption"—is at issue here. Hebert contends that the district court erred in concluding that he satisfied this exemption.

The learned professional exemption applies when an employee: (1) is compensated on a salary or fee basis at a specified salary level and (2) has a primary duty of performing work that requires "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual

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opening brief. Thus, Hebert has waived any arguments related to that decision, and Mohammed is not a party to this appeal. *See Gen. Universal Syss., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007).

instruction." 29 C.F.R. § 541.300. Because Hebert challenges both the salary basis element and the primary duty element, we address each argument in turn.

A.

Hebert first argues that the district court erred in concluding that he was paid on a salary basis.[2] We disagree. An employee is paid on a "salary basis" if "the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." 29 C.F.R. § 541.602(a). Hebert admits that he received a bi-weekly salary without regard to the number of hours or days he worked. That salary plainly satisfies the definition of "salary basis" in § 541.602(a).[3]

Hebert responds that, as earlier noted, in addition to his salary, he was also paid a field service premium for days that he was required to be in the field to assist with installation projects. This premium payment for the

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[2] To be eligible for the learned professional exemption, an employee must receive a salary at a rate of no less than $684 per week. 29 C.F.R. §§ 541.300(a)(1), 541.600. The record reflects that Hebert received a base salary of $90,000 per year during his last year of employment at FMC. He does not dispute that his salary met the salary-level requirement for the learned professional exemption. 29 C.F.R. § 541.600.

[3] Indeed, before the district court, Hebert's counsel acknowledged that if Hebert were not paid the field service premium and instead was only paid this salary, Hebert would satisfy the salary basis element.

specific services, he argues, means that he was not paid on a salary basis. The regulations foreclose that assertion. Hebert does not lose his status as an employee paid on a salary basis just because he is also paid a bonus on top of the salary that the record has established was guaranteed to him. 29 C.F.R. § 541.604(a).[4] We thus conclude that the district court correctly found that Hebert satisfied the "salary basis" element of the learned professional exemption.[5]

B.

Hebert further contends that the district court erred in concluding that his primary duty was the performance of work "[r]equiring knowledge of an advanced type." 29 C.F.R. § 541.300(a)(2)(i). Instead, he asserts that his primary duty as an installation engineer was "very much a technician role" in which he performed manual labor at

[4] "An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis." 29 C.F.R. § 541.604(a).

[5] Hebert also argues that *Hewitt v. Helix Energy Solutions Group, Inc.*, 15 F. 4th 289 (5th Cir. 2021) (en banc), requires FMC to establish the reasonable relationship requirement of Section 604(b). Section 604(b), however, only applies to employees whose earnings are computed on an hourly, daily, or shift basis. 29 C.F.R. § 541.604(b). Furthermore, in *Hewitt*, there was no dispute that the employee was paid solely at a daily rate. 15 F.4th at 292. Thus, Section 604(b) is inapplicable here because the record shows Hebert was paid a guaranteed bi-weekly salary.

offshore sites. But the record again does not support his assertions.

For one, Hebert, consistent with his engineering degree, did perform work "[r]equiring knowledge of an advanced type." *Id.* For purposes of the learned professional exemption, such work must satisfy three criteria: (1) the employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a "field of science or learning;" and (3) the advanced knowledge must be "customarily acquired by a prolonged course of specialized intellectual instruction." *Clark v. Centene Co. of Tex., L.P.*, 656 F. App'x 688, 693 (5th Cir. 2016) (per curiam) (citing 29 C.F.R. § 541.301(a)). And here, Hebert performed work that checks off all three.

First, the record shows that Hebert's work as an installation engineer required advanced knowledge. The FLSA's implementing regulations define "work requiring advanced knowledge" as work that is "predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from [the] performance of routine mental, manual, mechanical[,] or physical work." 29 C.F.R. § 541.301(b). Such work usually requires that employees "analyze, interpret[,] or make deductions from varying facts or circumstances." *Id.*

At FMC, Hebert was required to: (1) create technical procedures for installation projects, (2) analyze and interpret information, (3) review engineering designs and documents, and (4) consult with other departments on designs. Once his planning duties were complete, Hebert

then assisted with the on-site installation of FMC's complex subsea drilling equipment, which, it is true, required him, at times, to perform manual labor. His on-site work, however, also consisted of identifying problems during installation and providing technical support for the issues that arose during the process. To the point: Hebert's work in the office and on-site required him to consistently exercise his discretion and judgment regarding the appropriate procedures for installing FMC's equipment. In short, Hebert performed work requiring advanced knowledge.

Second, such knowledge is in a field of science or learning. The regulations specifically identify "engineering" as a "field of science and learning." 29 C.F.R. § 541.301(c).

And third, such knowledge is "customarily acquired by a prolonged course of specialized intellectual instruction." "[T]he best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree." *Clark*, 656 F. App'x at 693 (citing 29 C.F.R. § 541.301(d)). The record shows that FMC required its engineers to hold a degree in engineering and that Hebert has a bachelor's degree in mechanical engineering. Hebert speculates that some installation engineers did not have degrees in engineering. But that assertion does not advance his claim—the exemption only requires that the advanced knowledge be customarily acquired through prolonged, specialized intellectual instruction. § 541.301(d) ("Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law

school, or the occasional chemist who is not the possessor of a degree in chemistry."). Thus, the record shows that Hebert performed work "[r]equiring knowledge of an advanced type." 29 C.F.R. § 541.300.

Finally, despite his contention otherwise, that work was his primary duty. The regulations define an employee's "primary duty" as the "principal, main, major or most important duty that the employee performs." 29 C.F.R. § 541.700(a). "[E]mployees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement." 29 C.F.R. § 541.700(b). And here, the record shows that Hebert spent more than 50 percent of his time at FMC planning and reviewing installation procedures—not performing manual labor at the offshore installation sites.

Thus, the record reflects that Hebert's primary duty at FMC was the performance of exempt work and that he therefore falls under the learned professional exemption from overtime payment.

IV.

To sum up: We conclude that Hebert was paid on a salary basis and that his primary duty as an installation engineer at FMC was the performance of exempt work. We therefore hold that the district court did not err in concluding that Hebert was exempt from the FLSA's overtime requirement under the learned professional exemption, and, consequently, the judgment of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-20562

BRENT HEBERT,
Plaintiff-Appellant,
AARON MOHAMMED,
Appellant,

—*vs.*—

FMC TECHNOLOGIES, INCORPORATED,
Defendant-Appellee.

Filed: June 21, 2023

Before: JOLLY, OLDHAM and WILSON, *Circuit Judges.*

ON PETITION FOR REHEARING EN BANC

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

No. 4:20-cv-02059

BRENT HEBERT,

Plaintiff,

—*vs.*—

FMC TECHNOLOGIES, INCORPORATED,

Defendant.

Filed: September 28, 2022

MEMORANDUM OPINION AND ORDER

Before the Court are four motions: first, Plaintiff's Motion for Partial Summary Judgment as to Exemption Defenses (Doc. #42), Defendant's Response (Doc. #53), and Plaintiff's Reply (Doc. #55); second, Plaintiff's Renewed Motion to Certify Class (Doc. #44), Defendant's Response (Doc. #54), and Plaintiff's Reply (Doc. #55); third, Defendant's Motion for Summary Judgment (Doc. #45), Plaintiff's Response (Doc. #58), and Defendant's Reply (Doc. #60); and fourth, Plaintiff's Motion for Partial Judgment on the Pleadings (Doc. #59), Defendant's Response (Doc. #61), Plaintiff's Notice of Additional Authority (Doc. #63), and Defendant's Response (Doc. #64).

Having reviewed the parties' arguments and applicable law, the Court denies Plaintiff's Motion for Partial Summary Judgment as to Exemption Defenses (Doc. #42), denies Plaintiff's Renewed Motion to Certify Class (Doc. #44), denies Plaintiff's Motion for Partial Judgment on the Pleadings (Doc. #59), and grants Defendant's Motion for Summary Judgment (Doc. #45).

I. BACKGROUND

Brent Hebert ("Hebert" or "Plaintiff"), a former employee of FMC Technologies, Inc. ("FMC" or "Defendant"), claims that he and others were denied overtime pay in violation of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (the "FLSA"). Doc. #18.

a. Factual Background

Hebert worked as an installation engineer for FMC from August 2015 to February 2020. Doc. #42 ¶ 3. Installation engineers "provide[] support for testing, installation, intervention, and recovery of subsea equipment. This role's main tasks are to plan, create technical procedures, create equipment lists, provide on-site technical [support], and write the post activity technical report." Doc. #48 at 18. FMC paid installation engineers, including Hebert, a salary plus a daily bonus (called a "field service premium") when they worked in the field. Doc. #42, Ex. 2 at 55.

b. Procedural Background

Hebert filed this lawsuit on June 11, 2020, alleging that he is owed overtime pay under the FLSA because FMC improperly classified him as an exempt employee. Doc.

#1. After Hebert amended his complaint, FMC answered, asserting numerous exemptions and good faith as affirmative defenses. Doc. #18; Doc. #20 at 7-9. On December 14, 2020, Hebert filed his Opposed Motion to Certify Class. Doc. #23. After both parties submitted evidence regarding Hebert and other installation engineers' job duties, the Court held a hearing on the matter. On February 5, 2021, the Court denied Hebert's Opposed Motion to Certify Class. Doc. #34. In that Order, the Court found that Hebert was paid an annual salary and "falls under the learned professional exemption." Doc. #34 at 10, 11. This case was then reassigned to the Honorable Judge Alfred Bennett on December 9, 2021, after Judge Vanessa Gilmore's retirement. Doc. #51.

Plaintiff now moves for partial summary judgment as to FMC's exemption defenses, arguing that he is not exempt from overtime payments because FMC does not pay its installation engineers on a salary basis. Doc. #42 at 14. Plaintiff additionally renewed his request for class certification, arguing that the salary question can be answered collectively. Doc. #44 at 3. For its part, Defendant moves for summary judgment, arguing that the evidence establishes Hebert as an exempt employee not qualifying for overtime pay. Doc. #45 at 5. Lastly, Plaintiff moves for partial judgment on the pleadings, asking the Court to dismiss Defendant's affirmative defenses. Doc. #59 at 1.

II. LEGAL STANDARDS

a. Federal Rule of Civil Procedure 12(c)

After the pleadings are closed, a party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c). A motion brought pursuant to Fed. R. Civ. P. 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts. *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002). The standard for deciding a Rule 12(c) motion is identical to that of Rule 12(b)(6). *Mt. Hawley Ins. Co. v. Jamal & Kamal, Inc.*, 550 F. Supp. 3d 432, 435 (S.D. Tex. 2021).

To survive a 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state claim to relief that that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (internal citation omitted). "This plausibility standard is met when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). When conducting its inquiry, a court may consider the complaint and any documents attached to the complaint. *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir.

1996). Courts must accept "all well-pleaded facts as true and views those facts in the light most favorable to the plaintiff." *Bustos v. Martini Club Inc.*, 599 F.3d 458, 461 (5th Cir. 2010).

b. Federal Rule of Civil Procedure 56

Summary judgment is proper where there is no genuine dispute of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). A district court "may accept as undisputed the movant's version of the facts and grant [the] motion … when the movant has made a prima facie showing of entitlement to summary judgment." *Better Bags, Inc. v. Ill. Tool Works, Inc.*, 939 F. Supp. 2d 737, 740 (S.D. Tex. 2013). Additionally, "even where the underlying facts are undisputed, … the court must indulge every [r]easonable inference from those facts in favor of the party opposing the motion." *Am. Tel. & Tel. Co. v. Delta Commcins Corp.*, 590 F.2d 100, 101-02 (5th Cir. 1979). However, summary judgment "may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence." *Rogers v. Bromac Title Servs., LLC*, 755 F.3d 347, 350 (5th Cir. 2014).

III. Analysis

a. Plaintiff's Motion for Partial Judgment on the Pleadings

As a matter of efficiency, the Court addresses Plaintiff's Motions first. Plaintiff moves for partial judgment on the pleadings, arguing that the Defendant's affirmative defenses should be dismissed because

Defendant did not present a factual basis for the defenses claimed in its Answer. Doc. #59 at 5-6. "To successfully plead the affirmative defense of exemption from FLSA provisions that govern minimum wage and overtime requirements, the defendant must identify the exemption of the FLSA by name." *Franks v. Tyhan, Inc.*, No. CV-H-15-191, 2016 U.S. Dist. LEXIS 50616, 2016 WL 1531752, at *2 (S.D. Tex. Apr. 15, 2016). Defendant effectively identified exemptions by name in its Answer. Doc. #20 at 8 ¶ 4-12. Moreover, the motions deadline in this case was November 12, 2021. Doc. #41. Plaintiff filed this Motion on January 14, 2022, sixty-three (63) days after the deadline. Doc. #59. Plaintiff does not attempt to explain the delay as required by Federal Rule of Civil Procedure 16(b)(4). Thus, Plaintiffs Motion for Partial Judgment on the Pleadings is denied on both substantive and procedural grounds.

b. Plaintiff's Motion for Partial Summary Judgment and Class Certification

Plaintiff has two additional motions: Plaintiffs Motion for Partial Summary Judgment as to Exemption Defenses, arguing that FMC does not pay its installation engineers on a salary basis and therefore Defendant's affirmative defense fails as a matter of law (Doc. #42); and Plaintiff's Renewed Motion to Certify Class, arguing that notice should issue because the salary basis component of FMC's exemption defenses can be answered collectively. Doc. #44. Plaintiff's Renewed Motion to Certify Class is filed after the denial of his initial request for class certification. Doc. #23; Doc. #34. In denying Plaintiffs Opposed Motion to Certify Class (Doc. #23), Judge

Gilmore answered the salary question. Doc. #34 at 10-11. Specifically, Judge Gilmore found that "Plaintiff was paid an annual salary, the reasonable relationship test [did] not apply, … [and] … Plaintiff still [fell] under the learned professional exemption." *Id.* at 11.

Although there is no Federal Rule of Civil Procedure that specifically provides for motions for reconsideration, this Court has held that motions for reconsideration of interlocutory orders are governed by Federal Rule of Civil Procedure 54(b). *McManaway v. KBR, Inc.*, 4:10-CV-1044, 2015 U.S. Dist. LEXIS 196846, 2015 WL 13310061, at *13 (S.D. Tex. Aug. 9, 2015). While the Court has discretion to reconsider its decision under Rule 54(b), "[s]imilar considerations to those under Rules 59 and 60 bear on the Court's review, such as whether the movant is attempting to rehash its previously made arguments or is attempting to raise an argument for the first time without justification." *McManaway*, 2015 U.S. Dist. LEXIS 196846, 2015 WL 13310061, at *13. The party moving for reconsideration must establish a "manifest error of law or fact" or "newly discovered evidence." *Id.* at *13-*14.

Here, the facts supporting the Court's decision are clearly established in the record. First, FMC paid Hebert a biweekly salary that did not change based on the days or hours he worked. Doc. #53, Ex. 1 at 2-4, Ex. 2 at 4-6, and Ex. 3 at 1. Second, Hebert received the field service premium in addition to his salary for days he spent working in the field. Doc. #53, Ex. 1 at 2. Plaintiff, citing his offer letter, argues that FMC failed to guarantee his pay and therefore could not have paid him a salary. Doc. #42 at 18-22. But the offer letter says that there is no

"guarantee of employment" due to the at-will employment relationship. Doc. #42, Ex. 5 at 1. There is no evidence to suggest that while employed, the salary was not guaranteed. Additionally, an employer like FMC may prospectively reduce salaries in response to economic downturns without violating the "predetermined" or "guaranteed" aspects of a salary. *Kitagawa v. Drilformance, LLC*, No. CV-H-17-726, 2018 U.S. Dist. LEXIS 72690, 2018 WL 1992777, at *6 (S.D. Tex. Apr. 27, 2018).

Plaintiff next argues that if his salary was guaranteed, there was not a reasonable relationship between the guaranteed amount and the amount he actually earned as an installation engineer. Doc. #42 at 22-26. However, "[t]he reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis." 29 C.F.R. § 541.604(b). "It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary." *Id.* Hebert's annual base salary was paid biweekly and did not change based on the hours he worked or what he was doing. Doc. #53, Ex. 1 at 2 and Ex. 2 at 4, 6-9. The Court, in agreement with Judge Gilmore, therefore finds that Hebert was paid a salary. Plaintiff's Motion for Partial Summary Judgment as to Exemption Defenses and Renewed Motion to Certify Class are both denied accordingly.

c. Defendant's Motion for Summary Judgment

Defendant FMC moves for summary judgment, arguing that the Court should dismiss all of Plaintiff's claims because it paid Plaintiff a salary, properly classified him as exempt under the learned professional exemption, and is therefore not required to pay him overtime. Doc. #45 at 5, 9-10. As discussed above, Judge Gilmore appropriately found that Plaintiff fell under the learned professional exemption when denying Plaintiff's Opposed Motion to Certify Class. Doc. #34 at 10; *see supra* p. 5. The learned professional exemption requires that the employee be paid at least $684.00 per week and that his "primary duty" of work meet the following elements: (1) the employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a "field of science or learning;" and (3) the advanced knowledge must be "customarily acquired by a prolonged course of specialized intellectual instruction." *Clark v. Centene Co. of Texas, L.P.*, 656 F. App'x 688, 693-94 (5th Cir. 2016) (citing 29 C.F.R. § 541.301(a)). "The term 'primary duty' means the principal, main, major or most important duty that the employee performs." *Jones v. New Orleans Reg'l Physician Hosp. Org., Inc.*, 981 F.3d 428, 434 (5th Cir. 2020) (citing 29 C.F.R. § 541.700(a)).

Regarding Hebert's status as a learned professional, engineering is a field of science and learning. FMC required its second and third level installation engineers to at least have a Bachelor of Science in engineering. Doc. #48 at 33. Hebert obtained a Bachelor of Science in Mechanical Engineering from the University of Louisiana at Lafayette before starting at FMC as an entry-level

rotation engineer. Doc. #48 at 51-58. Most importantly, the purpose of the installation engineer position was to provide the technical planning for the testing, installation, mobilization, and demobilization of the complicated and expensive subsea equipment FMC sells to its customers. Doc. #48 at 33, 34. In total, the summary judgment evidence demonstrates that Hebert's most important duties required engineering knowledge. Accordingly, the Court finds that there is no genuine dispute of material fact regarding Hebert's exempt status under the learned professional exemption. Defendant appropriately classified Hebert as an exempt worker and he is not entitled to overtime compensation as a matter of law. Defendant's Motion for Summary Judgment is granted.

IV. CONCLUSION

For the foregoing reasons, the Court finds that Defendant correctly classified Hebert as exempt from overtime compensation under the learned professional exemption. Accordingly, Plaintiff's Motion for Partial Summary Judgment as to Exemption Defenses, Renewed Motion to Certify Class, and Motion for Partial Judgment on the Pleadings are all hereby DENIED. Alternately, Defendant's Motion for Summary Judgment is hereby GRANTED and the case is DISMISSED with prejudice.

It is so ORDERED.

Date: September 27, 2022

[handwritten: signature]

Hon. Alfred H. Bennett
United States District Judge

APPENDIX D

RELEVANT STATUTORY PROVISION AND FEDERAL REGULATIONS

29 U.S.C. § 213(a)(1)

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to—

> **(1)** any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or
>
> * * *

29 C.F.R. § 541.602 [Version effective until Jan. 1, 2020] Salary basis.

(a) ***General rule***. An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) ***Exceptions***. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

> **(1)** Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are

made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an

employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

29 C.F.R. § 541.602 [Version effective Jan. 1, 2020] Salary basis.

(a) *General rule*. An employee will be considered to be paid on a "salary basis" within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

(2) An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(3) Up to ten percent of the salary amount required by § 541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance,

the calendar year will apply. This provision does not apply to highly compensated employees under § 541.601.

(i) If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by § 541.600(a), the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any such final payment made after the end of the 52-week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

(ii) An employee who does not work a full 52-week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established in paragraph (a)(3) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (a)(3)(i) of this section within one pay period after the end of employment.

(b) ***Exceptions***. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan;

and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer

may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the

time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

29 C.F.R. § 541.604 [Version effective until Jan. 1, 2020] Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at

least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary of $650 per week who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

29 C.F.R. § 541.604 [Version effective Jan. 1, 2020] Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $684 each week paid on a salary basis may also receive additional compensation of a one percent

commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $684 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $684 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $725 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $210 per shift without violating the $684-per-week salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift

basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.