Hunt v. City of Los Angeles

United States District Court for the Central District of California

July 6, 2023, Decided; July 6, 2023, Filed

CV 21-6059 PA (RAOx)

Reporter
2023 U.S. Dist. LEXIS 117127 *

Bryan Hunt v. City of Los Angeles, et al.

Prior History: Hunt v. City of Los Angeles, 2021 U.S. Dist. LEXIS 260936 (C.D. Cal., Aug. 2, 2021)

Core Terms

Hotel, training, Trainees, Academy, compensated, recruits, summary judgment, time spent, restrictions, ***overtime***, minimum wage, employees, pursuits, sleeping, attend, parties, spent, compressed, ***overtime*** wages, apartments, regulation, studying, training session, cause of action, failure to pay, free time, evenings, premises, residing, nights

Counsel: **[*1]** For Bryan Hunt, individually, and on behalf of all others similarly situated, Plaintiff: Charles M Ray, LEAD ATTORNEY, Rey and Seyb LLP, Irvine, CA; Spencer Laurence Seyb, II, Ray and Seyb LLP, Tustin, CA.

For County of Los Angeles, a public entity, Defendant: Jeffery E Stockley, LEAD ATTORNEY, Alexander Y Wong, Liebert Cassidy Whitmore, Los Angeles, CA; Elizabeth Tom Arce, Liebert Cassidy Whitmore APC, Los Angeles, CA; Geoffrey S Sheldon, Liebert Cassidy Whitmore APLC, Los Angeles, CA.

Judges: PERCY ANDERSON, UNITED STATES DISTRICT JUDGE.

Opinion by: PERCY ANDERSON

Opinion

CIVIL MINUTES - GENERAL

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court are cross-motions for summary judgment Before the Court are cross-motions for summary judgment, filed by defendant County of Los Angeles (the "County") (Docket No. 55) and plaintiff Bryan Hunt ("Plaintiff") (Docket No. 60). Both motions have been fully briefed. (Docket Nos. 59, 61, 63-64.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds these matters appropriate for decision without oral argument. The hearing calendared for July 3, 2023, was vacated, and the matters taken off calendar.

I. Factual and Procedural Background

In February of 2020, the County hired Plaintiff as a Fire Fighter **[*2]** Trainee ("Trainee") for the Los Angeles County Fire Department. Upon successful completion of the County's Fire Fighter Training Academy ("Training Program"), Plaintiff would be eligible to become a full-time Fire Fighter. In a letter to Plaintiff dated February 27, 2020, the County informed Plaintiff that his starting salary would be $5,269.94 per month, that the Training Program would last 81 days, and that the Trainees must report to the County's training center in Pomona, California ("Fire Academy") on March 23, 2020, for their first day. (Docket No. 55-1, Ex. A.) However, on March 19, 2020, as a result of the COVID-19 pandemic, California Governor Gavin Newsom issued a statewide "stay-at-home" Executive Order N-33-20, instructing "all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors . . . ." ("Executive Order").[1]

[1] The County requests that the Court take judicial notice of Governor Newsom's "stay-at- home" Executive Order. (Docket Nos. 55-3, 61-2.) Plaintiff does not oppose the County's request. A court may take judicial notice of undisputed matters of public record. See Fed. R. Evid. 201; Harris v. Cnty. of

(Docket No. 55-1, Ex. B.)

In response to the Executive Order, the County modified the Training Program. At the recommendation of the County's medical experts, in order to conduct the Fire Academy more safely and to minimize the **[*3]** chance of a Trainee catching COVID-19, the County developed a compressed training plan where the Trainees would stay in a hotel ("Hotel") near the Fire Academy 6 nights per week, at the County's expense, so they could train Mondays through Saturdays. The compressed Training Program was made available to Trainees like Plaintiff, who had prior firefighting experience, and allowed them to complete their training at the Fire Academy in 4 weeks. The Trainees would train at the Fire Academy 6 days per week for 10 hours each day, from March 30 to April 27, 2020. The County announced its plan for the compressed Training Program to the Trainees on March 26, 2020. Because of the compressed schedule and longer work days and weeks, the County paid the Trainees 40 hours of regular pay (or "straight" time) and 20 hours of ***overtime*** for each of the 4 weeks. After training at the Fire Academy, Trainees such as Plaintiff would be assigned to work out of various fire stations throughout Los Angeles County to complete the remaining few weeks of the Training Program.

The Trainees were given the option of proceeding with the compressed Training Program or deferring their training to a later date. They were **[*4]** told that if they wished to continue with the Training Program at that time, they would need to check in to the Hotel on March 30, 2020. Any Trainees that opted to proceed were required to sign a document titled "Hotel Policy and Agreement" ("Hotel Agreement"). (Docket No. 55-1, Ex. D.)

The Hotel Agreement stated, in pertinent part:

> In consideration of being provided paid lodging at [the Hotel] . . . during [the Training Program] by the County of Los Angeles Fire Department ("Department"), I hereby represent, covenant and agree . . . as follows:
>
> 1. I understand that as a recruit . . . even when I am not working on the training grounds and am at the Hotel, I am still representing the Department and therefore will remain physically and mentally available at all times.
>
> 2. I understand that my whereabouts must be known at all times and I agree to notify my chain of command accordingly.
>
> . . .
>
> 4. I further understand that I am expected to: . . . use my time at the Hotel wisely (i.e., uniform and equipment maintenance and preparation, study time, and rest), including but not limited to: Vacate common areas by 2200 hours . . . .

Id. The Hotel Agreement also prohibited the Trainees from having outside **[*5]** visitors and leaving the Hotel "unless for emergency reasons approved by the chain of command" (with the exception of Saturdays after training through Sunday evenings). (Id.) While at the Hotel, the Trainees could rest, sleep, call loved ones, order food, watch movies, do nothing at all, etc. The Trainees were not responsible for responding to work/training calls when they were at the Hotel.[2]

Plaintiff opted to participate in the compressed Training Program, rather than defer, and signed the Hotel Agreement. He reported to the Hotel on March 30, 2020, and completed the Fire Academy portion of the Training Program on April 27, 2020.

While attending the Fire Academy and residing at the Hotel, the Trainees were required to arrive at the Hotel sometime around 7:00 or 8:00 p.m. on Sunday evenings. Mondays through Saturdays, the Trainees would typically leave the Hotel to go to the Fire Academy between 5:30 and 6:00 a.m. The Fire Academy was a 2-minute drive from the Hotel. Mondays through Fridays, the Trainees remained at the Fire Academy until sometime between 4:00 and 6:30 p.m. On Saturdays, the Trainees were typically released slightly earlier, between 3:30 and 5:30 p.m. After training **[*6]** on Saturdays, the Trainees were free to leave the Fire Academy and were not required to return to the Hotel until the subsequent evening. When the Trainees were at the Fire Academy, the County provided them with breakfast, lunch, and dinner.

Plaintiff spent his time in the Hotel video chatting with

Orange, 682 F.3d 1126, 1132 (9th Cir. 2012); Armstrong v. Newsom, No. CV 20-3745-GW-ASX, 2020 U.S. Dist. LEXIS 172555, 2020 WL 5585053, at *1 (C.D. Cal. Aug. 3, 2020) ("[A] court can take judicial notice of actions/orders of the California Governor."). Accordingly, the Court grants the County's request.

[2] The Fire Academy Training Captains also stayed at the Hotel, but did not check in on the Trainees, or otherwise disturb the Trainees while in their rooms. Rather, the Training Captains were available to assist the Trainees and respond to any issues or emergencies that might arise, as well as to ensure that the Trainees complied with the provisions of the Hotel Agreement.

his family, showering, going through his clothes, studying, and sleeping. He testified that he was typically in bed every night by about 8:00 or 8:30 p.m. After training ended on Saturdays, Plaintiff would go home to spend time with his family. For each of the 4 weeks that Plaintiff attended the Fire Academy, the County compensated him for 40 hours of "straight" time (10 hours per day, Monday through Thursday) and 20 hours of ***overtime*** (10 hours per day, Friday and Saturday). The County did not compensate Plaintiff for the time he spent at the Hotel before/after training sessions ("Hotel Time"). Plaintiff does not dispute that he understood he would be paid 40 hours of regular pay and 20 hours of ***overtime*** pay for the time he spent at the Fire Academy. Instead, he claims that because he was never told that he would not be paid for his time spent at the Hotel, he assumed that he would also receive **[*7]** payment for that time. However, after receiving his first paycheck, Plaintiff realized that the County was not compensating him for the Hotel time. Nonetheless, Plaintiff continued to attend the Fire Academy and did not raise any objections regarding his pay while completing the Training Program. About a year later, Plaintiff filed a class action Complaint in state court against the County,[3] alleging four causes of action: (1) violation of the Private Attorneys General Act, (2) unfair business practices, (3) failure to pay minimum wages in violation of the Fair Labor Standards Act ("***FLSA***"), 29 U.S.C. § 206(a); and (4) failure to pay ***overtime*** wages in violation of the ***FLSA***, 29 U.S.C. §§ 207, 216. (Docket No. 1, Ex. A.)

The County removed the action to this Court, and the Court subsequently remanded the action due to a procedural defect in the County's Notice of Removal. (Docket No. 12.) The County filed a Motion for Reconsideration, which the Court denied, and then the County appealed. (Docket Nos. 14, 19-20.) On appeal, the Ninth Circuit vacated the remand order, and the action was restored to the Court's active docket on September 30, 2022. (Docket Nos. 26-28, 30.) The Court then issued pretrial and trial dates, including a deadline of February 6, 2023, **[*8]** for hearing any motions for class certification or preliminary certification of an ***FLSA*** collective. (Docket No. 41.) Plaintiff did not file any such motion; rather, on February 6, 2023, Plaintiff filed an Ex Parte Application to extend the February 6, 2023, deadline. (Docket No. 45.) The Court denied the Ex Parte Application (Docket No. 48) and this case proceeded as an individual action. The parties then stipulated to the dismissal of Plaintiff's first and second causes of action. (Docket Nos. 49-50.) Now, both parties move for summary judgment.

[3] The Complaint originally named the City of Los Angeles as a defendant as well, but Plaintiff dismissed the City of Los Angeles on August 23, 2021. (See Docket No. 34-1.)

II. Legal Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show an absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once the moving party does so, the non-moving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. Id. at 324. The court does "not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial." Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir 1999). A "'scintilla of evidence,' or evidence that is 'merely colorable' or 'not significantly probative,'" does not present a **[*9]** genuine issue of material fact. United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989), cert denied, 493 U.S. 809, 110 S. Ct. 51, 107 L. Ed. 2d 20 (1989) (emphasis in original, citations omitted).

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir 1987). The court must view the inferences drawn from the facts "in the light most favorable to the nonmoving party." Id. at 631 (citation omitted). Thus, reasonable doubts about the existence of a factual issue should be resolved against the moving party. Id. at 630-31. However, when the non-moving party's claims are factually "implausible, that party must come forward with more persuasive evidence than would otherwise be [required] . . . ." California Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir 1987), cert denied, 484 U.S. 1006, 108 S. Ct. 698, 98 L. Ed. 2d 650 (1988) (citation omitted). "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of

proof at trial." Celotex Corp., 477 U.S. at 322.

III. Analysis

The County and Plaintiff move for summary judgment on both of Plaintiff's remaining ***FLSA*** claims: (1) failure to pay ***overtime*** **[*10]** wages, and (2) failure to pay minimum wages.

A. *Overtime* Wages Claim

Although the County compensated Plaintiff for 40 hours of "straight" time plus 20 hours of ***overtime*** each week, from March 30 through April 27, 2020, Plaintiff contends that the County should have also compensated him for the time he spent at the Hotel. The County asserts that two federal regulations render Plaintiff's Hotel Time non-compensable: 29 C.F.R. § 553.226(c) ("section 553.226(c)" or "§ 553.226(c)") and 29 C.F.R. § 785.23 ("section 785.23" or "§ 785.23"). Circuit courts — including the Ninth Circuit — often turn to the Code of Federal Regulations when resolving ***FLSA*** disputes similar to those in this action. See, e.g., Brigham v. Eugene Water & Elec. Bd., 357 F.3d 931, 940-42 (9th Cir. 2004); Leever v. Carson City, 360 F.3d 1014, 1017-21 (9th Cir. 2004); see also Garofolo v. Donald B. Heslep Assocs., Inc., 405 F.3d 194, 198-201 (4th Cir. 2005); Braziel v. Tobosa Developmental Servs., 166 F.3d 1061, 1063-64 (10th Cir. 1999).

1. 29 C.F.R. § 553.226(c)

Part 553 of Title 29 of the Code of Federal Regulations sets forth regulations specifically for the purpose of "carry[ing] out the provisions" of the ***FLSA*** as they "apply to employees of State and local public agencies." 29 C.F.R. § 553.2(a). Section 553.226(c) provides as follows:

> Police officers or employees in fire protection activities, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

According to this regulation, when a fire academy **[*11]** trainee is not in class or at a training session and can use his or her free time for "personal pursuits," the employer is not required to compensate the trainee for that free time. See, e.g., Banks v. City of Springfield, 959 F. Supp. 972, 976 (C.D. Ill. 1997) ("[I]f [p]laintiffs could use non-class and non-training time for personal pursuits, then that time is not compensable."). Although there is little case law interpreting or applying this regulation, Banks is instructive.

The plaintiffs in Banks were police officer recruits hired by the defendant City of Springfield (the "City"). Id. at 974. As new recruits, the plaintiffs were required to attend a 10-week law enforcement training course before they could become law enforcement officers. Id. at 975. During the training course, it was mandatory that the recruits live in apartment housing — paid for by the City — five nights per week. Id. While residing at the apartments, the recruits were subject to certain restrictions. For instance, visitors were not allowed, and the recruits were required to keep their apartments clean and had a nightly curfew. The recruits could be disciplined if they violated any of the rules. Id. Although the recruits "were subject to bed checks and room inspections, advisors seldom, if ever, conducted **[*12]** any." Id. After training activities and classes, the recruits were free to sleep, study, make personal phone calls, watch television, etc. Id. And, as the training course progressed, the recruits were given some "liberties," such as being allowed to have visitors at their apartments or go out to the movies (so long as they returned prior to curfew). Id. The City compensated the recruits for their time spent attending training activities and classes, but the recruits were not compensated for the time they spent outside of training activities and classes. Id. at 974-75. The plaintiff recruits filed a lawsuit against the City, alleging, in part, that the City violated the ***FLSA*** by not compensating them for all their time, including the time spent at their apartments. Id. at 973. The parties filed cross-motions for summary judgment, and the court applied § 553.226(c) and found that the plaintiffs' non-class and non-training time was not compensable. Id. at 976-78. The court explained that it "fails to see how the time available to [the] [p]laintiffs in which they were free to watch television, study, or read [was] time spent predominately for the benefit of the City." Id. at 978; see also id. ("Common sense reveals that Plaintiffs should not be **[*13]** compensated for the time which they spent sleeping." (citations omitted)). Even though the plaintiffs were subject to some restrictions while attending the training course, the plaintiffs "were never subject to being called for training or to attend a class once they had returned to their apartments, nor were they on-call." Id. at 977. Overall, the court found that the plaintiffs could still use the non-class and non-training time for "personal

pursuits." Id. at 978.

Here, the undisputed facts show that Plaintiff was a Fire Fighter Trainee in attendance at the County's Fire Academy. After training sessions, while at the Hotel, Plaintiff was free to engage in activities such as resting, studying, watching television, making phone or video calls, bathing, and spending time with other Trainees. Plaintiff also testified that he spent the majority of his time at the Hotel sleeping. Although Plaintiff was required to reside at the Hotel from Sunday evenings through Saturday afternoons/evenings and was subject to additional restrictions (i.e., no visitors), such restrictions were the result of extenuating circumstances — specifically, the COVID-19 pandemic and Governor Newsom's "stay-at-home" Executive Order. **[*14]** That is, all California residents, not just the Trainees, were somewhat restricted in what they could do during their free time in March and April of 2020.

Plaintiff points to the language in the Hotel Agreement stating that he was "expected" to "use [his] time at the Hotel wisely (i.e., uniform and equipment maintenance and preparation, study time, and rest)" as evidence that he was not free to use the Hotel Time for "personal pursuits." Plaintiff claims he was required to study, but testified that no one on the training staff at the Fire Academy instructed him that he had to study. (Docket No. 55-1, Ex. F at p. 166:13-16.) The County's Fire Department Battalion Chief declares that "Captains did not tell the recruits what they had to do once they were at the [H]otel" and "there was no requirement that they use the time in the hotel for studying." (Docket No. 55-1, Ex. 4 ¶ 23.) Additionally, time spent studying was predominately for Plaintiff's benefit, not the County's, and is therefore not compensable under the ***FLSA***. See Mory v. City of Chula Vista, No. 07-CV-462 JLS WVG, 2010 U.S. Dist. LEXIS 100777, 2010 WL 3748813, at *10 (S.D. Cal. Sept. 24, 2010) (finding study time non-compensable where the plaintiff was free to spend time for "personal pursuits" and "chose to spend th[e] time studying"). Overall, like the **[*15]** police recruits in Banks, Plaintiff had free time for "personal pursuits" while at the Hotel. Therefore, Plaintiff's Hotel Time is not compensable pursuant to § 553.226(c) and his claim for unpaid ***overtime*** wages fails as a matter of law.

2. 29 C.F.R. § 785.23

The County also contends that Plaintiff's Hotel Time is non-compensable pursuant to § 785.23, which provides as follows:

> An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted.[4]

An employer invoking this regulation has the burden of proving, "'plainly and unmistakably,' that (1) there was an agreement to compensate [the plaintiff] for her ***overtime*** work" and "(2) the agreement was 'reasonable,' having taken into account 'all of the pertinent **[*16]** facts.'" Leever, 360 F.3d at 1018 (citing Brigham, 357 F.3d at 940).

a. The Agreement

An agreement under section 785.23 can be "constructive," or "implied." Carman v. Yolo Cnty. Flood Control & Water Conservation Dist., 535 F. Supp. 2d 1039, 1052 (E.D. Cal. 2008) (citing Berry v. County of Sonoma, 30 F.3d 1174, 1180 (9th Cir.1994)); see Braziel, 166 F.3d at 1063 ("[A]n agreement to exempt sleep time from paid work under the ***FLSA*** can be implied . . . ."). "'A constructive agreement may arise if employees have been informed of the ***overtime*** compensation policy and continue to work under the disclosed terms of the policy.'" Watson v. Yolo Cnty. Flood Control & Water Conservation Dist., No. CIV. S061549FCDDAD, 2007 U.S. Dist. LEXIS 77131, 2007 WL 3034267, at *7 (E.D. Cal. Oct. 17, 2007) (quoting Berry, 30 F.3d at 1180); see Brigham, 357 F.3d 931, 939 (9th Cir. 2004) (describing a "constructive"

[4] Here, although County does not own the Hotel, section 785.23 is nonetheless applicable. The County paid for Plaintiff's room and board, and the Hotel was just a 2-minute drive from the Fire Academy. Both the regulation and related case law demonstrate that section 785.23 is not specifically limited to situations where the employee resides on property owned by the employer. See 29 C.F.R. § 785.23 ("This rule would apply, for example, . . . to a telephone operator who has the switchboard in her own home."); Leever, 360 F.3d 1017-21 (applying § 785.23 to analyze a police deputy's claim for ***overtime*** spent caring for her police dog at home).

agreement as arising from an employee's decision to continue working under the employer's compensation policy).

Here, the undisputed facts demonstrate that the parties had a constructive agreement regarding Plaintiff's compensation during the Training Program. Plaintiff received a letter from the County on February 27, 2020, stating that his monthly Trainee salary would be $5,269.94 and that the Training Program would last 81 days. Then, on March 26, 2020, the County announced the modifications to the Training Program in response to the "stay-at-home" Executive Order. As a result of the modified plan, the County housed the Trainees in the Hotel and shifted to a 6-day per week schedule, with ***overtime*** pay for the time spent training in excess of 40 hours per week. Plaintiff **[*17]** had the option of deferring to a later recruit class, but chose to participate in the modified Training Program and signed the Hotel Agreement. The Hotel Agreement did not promise compensation for the time spent at the Hotel; rather, it stated that the County would pay for the Trainees' lodging, and, in consideration, the Trainees would follow certain rules. Throughout the 4 weeks Plaintiff lived (for the most part) at the Hotel, the County compensated him for 40 hours of "straight" time and 20 hours of ***overtime***. Plaintiff says he assumed he would be compensated for his time spent at the Hotel, but admits that no one from the County ever told him that he would be compensated for that time. Plaintiff has not provided any reason or evidence, aside from the County's silence, to support his assumption. Moreover, Plaintiff continued with the Training Program even after he realized that the County was not compensating him for the Hotel Time.

The undisputed facts, taken together, demonstrate that the parties had a "constructive agreement" for purposes of § 785.23. the parties constructively agreed that Plaintiff would work 6 days per week and receive compensation equal to 40 hours of regular pay and **[*18]** 20 hours of ***overtime*** pay for his time spent at the Fire Academy engaging in training sessions and activities.

b. Reasonableness

Section 785.23 does not specify what facts are pertinent to the reasonableness inquiry, rather, it merely states that "all of the pertinent facts" should be taken into consideration. 29 C.F.R. § 785.23. However, the Ninth Circuit has provided some guidance, explaining that "the reasonableness of a § 785.23 agreement must be assessed in light of all of the surrounding circumstances" and, "at a minimum, . . . must take into account some approximation of the number of hours actually worked by the employee or that the employee could reasonably be required to work." Leever, 360 F.3d at 1019-21. Additionally, in Brigham, the Ninth Circuit applied the following factors from Owens v. Local No. 169, Ass'n of W. Pulp and Paper Workers, 971 F.2d 347 (9th Cir. 1992)[5] "to gauge the reasonableness" of the parties' agreement:

> "(1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether the use of a pager could ease restrictions; and (7) **[*19]** whether the employee had actually engaged in personal activities during call-in time."

Brigham, 357 F.3d at 936 (quoting Owens, 971 F.2d at 351 (footnotes omitted)). The Circuit acknowledged that some of the Owens factors "seem somewhat duplicative in the context of on-site residence," but nonetheless found the factors, as a whole, to be a "worthy lens" through which to assess reasonableness. Brigham 357 F.3d at 941.

In Brigham, the plaintiff employees were required to live at the defendant employer's power generation facility and were sometimes assigned to "duty shifts," which lasted 24 hours. Id. at 933-34. Employees were compensated 10 hours of wages for a duty shift. Id. The designated "duty shift" employee was not allowed to leave the premises and was responsible for performing inspections, maintaining the power plant, responding to phone calls or system alerts, and more. Id. Subject to these restrictions and responsibilities, the on-duty employee was free to sleep, eat, spend time with their families (who also lived at the power generation facility), watch television, etc. Id. The plaintiff employees filed suit against the defendant employer, alleging claims for unpaid ***overtime*** wages and seeking compensation for the entirety of their "duty shift" time. The Ninth **[*20]** Circuit determined that the parties' agreement

[5] The Owens factors are typically used to determine whether an employee's time spent "on call" or "on duty" is compensable. See Owens, 971 F.2d at 351.

compensating the employees for 10 hours of their 24 hour "duty shift" was reasonable, noting that the employees were able to enjoy "long periods of uninterrupted personal time" to partake in personal activities. Id. at 942-43.

Here, the parties' constructive agreement took into account the number of hours actually worked by Plaintiff. That is, the County compensated Plaintiff for the 60 hours per week he spent training at the Fire Academy. Although Plaintiff was required to stay at the Hotel 6 nights per week, and was subject to certain restrictions, Plaintiff did in fact engage in "personal activities" while at the Hotel (i.e., calling his family, sleeping, showering, studying, etc.). The remainder of the Owens factors related to "on call" time support the reasonableness of the parties' agreement because the Trainees were not "on call" or "on duty" at the Hotel. Plaintiff did not receive work calls — and was not required to respond to any work calls — while he was at the Hotel. Additionally, the fact that the County placed some restrictions on Plaintiff during his Hotel Time does not render § 785.23 inapplicable. See Serv. Emps. Int's Union, Loc. 102 v. Cnty. of San Diego, 60 F.3d 1346, 1355 (9th Cir. 1994) (reversing the district court's holding that **[*21]** "any restrictions" placed on an employee render § 785.23 inapplicable and explaining that "the flexibility of the test . . . suggests the district courts' approach was improper"); id. ("The record does not demonstrate that night duty time was so restricted that it could not be used for personal activities.").

Taking into consideration "all pertinent facts" and "the surrounding circumstances" — namely, the COVID-19 pandemic and "stay-at-home" Executive Order, which limited the freedom of everyone in California to congregate and engage in personal pursuits — the parties' constructive agreement was reasonable. Indeed, the compressed training plan and Hotel stay benefitted the Trainees by limiting their risk of COVID-19 infection and allowing them to participate in the Fire Academy when they otherwise would not have been able to do so.

Overall, from March 30 through April 27, 2020, Plaintiff (effectively) resided on the County's premises and the parties had a reasonable, constructive agreement regarding ***overtime*** compensation. Accordingly, Plaintiff's Hotel Time is not compensable and Plaintiff's FSLA claim for unpaid ***overtime*** wages fails as a matter of law pursuant to § 785.23, in addition to § 553.226(c).[6]

B. Minimum Wages Claim

Given that Plaintiff's Hotel Time is not compensable under § 553.226(c) and § 785.23, his "failure to pay minimum wages" claim also fails as a matter of law. There is no dispute that the wages Plaintiff received for his work at the Fire Academy satisfied the ***FLSA***'s minimum wage requirement. (See Docket No. 60-6 (stating that Plaintiff was compensated $8,939.09 for his time at the Fire Academy).) Moreover, even if the Hotel Time was compensable, Plaintiff's total pay was high enough that his hourly rate exceeded the federal minimum wage. See 29 U.S.C. § 206(a) (mandating federal minimum wage of $7.25 per hour); Adair v. City of Kirkland, 185 F.3d 1055, 1063 (9th Cir. 1999) ("[T]he district court properly rejected any minimum wage claim the [employees] might have brought by finding that their salary, when averaged across their total time worked, still payed [sic] them above minimum wage").

Conclusion

For the foregoing reasons, the Court finds that Plaintiff's time spent at the Hotel during the Training Program is not compensable under 29 C.F.R. § 553.226(c) and § 785.23. Plaintiff's Motion for Summary Judgment is denied, and the County's Motion for Summary Judgment is granted. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

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[6] The Ninth Circuit has emphasized that § 785.23 is not "an exception to the ***FLSA*** ***overtime*** pay requirements"; rather, it "simply offers a sound methodology for calculating how many hours the employees actually worked within the meaning of ***FLSA***." Brigham, 357 F.3d at 942. Therefore, after finding that a reasonable agreement exists under § 785.23, a court must still determine the amount of ***overtime*** payment actually owed. See Watson, 2007 U.S. Dist. LEXIS 77131, 2007 WL 3034267, at *10 (E.D. Cal. Oct. 17, 2007) (citing Brigham **[*22]** and explaining that "even if the agreement is reasonable, a determination of the ***overtime*** payment owed is still required"). Here, the parties had a reasonable agreement that Plaintiff would only be compensated for his time spent actually training at the Fire Academy. Plaintiff does not dispute that he worked 20 ***overtime*** hours at the Fire Academy each week, from March 30 through April 27, 2020, and that the County properly compensated him for that work.

JUDGMENT

In accordance with the Court's July **[*23]** 6, 2023 Minute Order granting the Motion for Summary Judgment filed by defendant County of Los Angeles ("Defendant") and denying the Motion for Summary Judgment filed by plaintiff Bryan Hunt ("Plaintiff"), and the Court's March 14, 2023 Order granting the parties' Joint Stipulation to Dismiss First and Second Causes of Action from the Complaint,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is granted in favor of Defendant on Plaintiff's Third and Fourth Causes of Action, and that Plaintiff's First Cause of Action for violation of the California Private Attorneys General Act ("PAGA") (Labor Code § 2698, et seq.) and Second Cause of Action for violation of the California Business and Professions Code (Bus. & Prof. Code § 17200, et seq.) are dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff shall take nothing and Defendant shall have its costs of suit.

DATED: July 6, 2023

/s/ Percy Anderson

Percy Anderson

United States District Judge
