NOT FOR PUBLICATION

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SEP 19 2024

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRYAN HUNT, individually, and on behalf of all others similarly situated, Plaintiff-Appellant, v. COUNTY OF LOS ANGELES, a public entity, Defendant-Appellee, and CITY OF LOS ANGELES, a municipal entity; DOES, 1 through 100, inclusive, Defendants.	No. 23-55778 D.C. No. 2:21-cv-06059-PA-RAO MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted September 11, 2024
Pasadena, California

Before: R. NELSON, MILLER, and DESAI, Circuit Judges.

Bryan Hunt alleges that he is owed overtime pay under the Fair Labor

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Standards Act (FLSA) for hours spent at a hotel while participating in Los Angeles County's Fire Fighting Training Academy. The district court granted summary judgment for the County. Because federal regulations resolve Hunt's FLSA claim, we affirm.

Due to California Governor Gavin Newsom's statewide COVID-19 stay-at-home order, Hunt and other trainees with prior firefighting experience were offered a condensed four-week course, which Hunt chose to attend. To comply with the stay-at-home order, the County prohibited participating trainees from leaving their subsidized hotel after their daily training except in emergency cases or during their weekend break. According to the terms of the Hotel Agreement that participating trainees signed upon enrolling in the course, trainees were required to "remain physically and mentally available at all times" even if not working. But time spent at the hotel was unsupervised. And while there, trainees could "sleep, shower, eat, hydrate, exercise, play games, socialize with other recruits in small groups, call loved ones, watch movies, etc."

Hunt's claim fails under 29 C.F.R. § 553.226(c). That regulation provides that "employees in fire protection activities, who [attend] a . . . fire academy . . . 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." 29 C.F.R. § 553.226(c). The

regulation's plain text resolves this case. Hunt, an employee attending a fire academy, was "not in class or at a training session" during his hotel time. *Id.* All such classes and training took place at the Academy itself.

We are not persuaded by Hunt's argument to the contrary. Hunt argues that the regulation does not apply because he was "always on call and tethered to the hotel," and thus was not "free to use such time for personal pursuits." But the undisputed facts show that Hunt was not expected to do anything work-related during his time at the hotel and that he did, in fact, use the time for "personal pursuits" such as showering, laundry, and video chatting with friends and family.

Hunt's hotel time is not compensable just because the County, in its efforts to comply with California's stay-at-home order, required him to remain at the hotel. We already rejected analogous claims applying a different regulation, 29 C.F.R. § 785.23. In *Brigham v. Eugene Water & Electric Board*, we held that an employee required to remain on premises need not have "substantially the same flexibility or freedom as he would if not on call." 357 F.3d 931, 936 (9th Cir. 2004) (quoting *Owens v. Local No. 169, Ass'n of W. Pulp & Paper Workers*, 971 F.2d 347, 250–51 (9th Cir. 2004)). A contrary conclusion, we explained, would turn "all or almost all on-call time" into "working time, a proposition that settled case law and the administrative guidelines clearly reject." *Id.* (citation omitted). As such, Hunt's free time at the hotel was not compensable.

AFFIRMED.