# Hubbard v. Cnty. of Los Angeles

United States District Court for the Central District of California

June 7, 2024, Decided; June 7, 2024, Filed

CV 23-3541 PA (RAOx)

**Reporter**
2024 U.S. Dist. LEXIS 102008 *

Bryan Hubbard, et al. v. County of Los Angeles, et al.

**Counsel:** [*1] For Bryan Hubbard, an individual, Plaintiff: Charles M Ray, LEAD ATTORNEY, Rey and Seyb LLP, Irvine, CA; Joseph Jacob Wangler, Ray and Seyb LLP, Irvine, CA.

For County of Los Angeles, a public entity, Defendant: Alexander Y Wong, Liebert Cassidy Whitmore, Los Angeles, CA; Elizabeth Tom Arce, Liebert Cassidy Whitmore APC, Los Angeles, CA; Victor D. Gonzalez, Viddell Lee Heard, Jr, Geoffrey S Sheldon, Liebert Cassidy Whitmore APLC, Los Angeles, CA.

For Anthony C. Marrone, Chief of Los Angeles County Fire Department, Defendant: Alexander Y Wong, Liebert Cassidy Whitmore, Los Angeles, CA; Elizabeth Tom Arce, Liebert Cassidy Whitmore APC, Los Angeles, CA; Victor D. Gonzalez, Geoffrey S Sheldon, Liebert Cassidy Whitmore APLC, Los Angeles, CA.

For Daniel Turner, Mediator (ADR Panel): Daniel John Turner, LEAD ATTORNEY, Van Vleck and Turner LLP, 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 is a Motion for Summary Judgment ("Motion"), filed by defendants County of Los Angeles ("the County") and Los Angeles County Fire Chief Anthony C. Marrone (collectively, "Defendants"). (Docket No. 41.) [*2] Also before the Court is a Motion for Relief ("Motion for Equitable Tolling"), filed by plaintiff Bryan Hubbard ("Hubbard") and the 166 opt-in plaintiffs ("Opt-in Plaintiffs") (collectively, "Plaintiffs"). (Docket No. 50.) Both motions have been fully briefed. (See Docket Nos. 47-48, 52, 54.) 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 hearings calendared for May 13, 2024, and June 3, 2024, were vacated, and the matters taken off calendar.

### I. Background

Hubbard was a fire fighter trainee who attended the County's Fire Fighter Training Academy ("Fire Academy") in March and April of 2020. Due to the COVID-19 pandemic and the statewide "stay-at-home" Executive Order issued on March 19, 2020, the County adjusted its fire fighter training program.[1] To conduct the Fire Academy safely and minimize the chances of trainees contracting COVID-19, the County developed a modified training program where the trainees were required to quarantine in a hotel near the Fire Academy six nights per week, at the County's expense. The County consulted with the trainees' union — Los Angeles County Fire Fighters, Local 1014, IAFF, AFL-CIO ("the Union") — [*3] prior to implementing the new plan.[2]

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[1] Defendants request that the Court take judicial notice of Governor Gavin Newsom's "stay-at-home" Executive Order N-33-20. (Docket No. 43.) Plaintiffs do not oppose the request. Courts may take judicial notice of undisputed matters of public record. See Harris v. Cnty. of 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 Defendants' request.

[2] The trainees' work hours and wages were established by a Memorandum of Understanding ("MOU") between the Union and the County. Defendants request that the Court take judicial notice of certain sections of the MOU. (Docket No. 48-

The trainees in Recruit Classes 156 through 160 participated in the modified training program. They attended the Fire Academy six days per week for ten hours a day. Mondays through Fridays, after leaving the Fire Academy, they were required to quarantine at the hotel until their training began again the next morning. After training ended on Saturdays, the trainees were free to leave the Fire Academy and hotel, as long as they returned to the hotel the next evening. The County did not require the trainees to respond to work calls while at the hotel and did not compensate them for the time they spent quarantining there. Rather, the trainees were compensated for the 40 hours of regular time and 20 hours of overtime they spent training each week. Recruit Class 156 began their training and quarantining at the hotel on March 30, 2020, and Recruit Class 160 completed its training and quarantining on November 25, 2020.

Hubbard, a member of Recruit Class 156, filed his collective action complaint on March 8, 2023, alleging the following claims against Defendants: (1) failure to pay overtime wages in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207; and (2) "writ of mandate" pursuant [*4] to Cal. Code. Civ. P. § 1085. (Docket No. 1-1.) The First Amended Complaint alleges that Defendants should have compensated Hubbard and similarly situated trainees in Recruit Classes 156 through 160 for the time they spent quarantining at the hotel. The Court granted Hubbard's "Motion for Conditional Certification of FLSA Collective Action" on October 23, 2023. (Docket No. 32.) On January 30, 2024, the 166 Opt-in Plaintiffs joined the action by filing their Consent Forms. (Docket No. 39.) The Opt-in Plaintiffs were members of Recruit Classes 156, 157, 158, 159 or 160, and were required to quarantine in a hotel while training at the Fire Academy. Defendants now move for summary judgment on all of Plaintiffs' claims.[3]

## 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 [*5] 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 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

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2.) Plaintiffs do not object. Courts may take judicial notice of agreements between labor organizations and local governments. See DiRuzza v. Tehama, 206 F.3d 1304, 1310 n.3 (9th Cir. 2000) (taking judicial notice of memorandum of understanding between county and county law enforcement officers' bargaining unit); Cole v. Cty. of Orange, No. 8:18-CV-01020-DOC-KES, 2019 U.S. Dist. LEXIS 130883, 2019 WL 3064483, at *2 (C.D. Cal. Mar. 27, 2019) (taking judicial notice of memorandum of understanding between county and county employee association). Accordingly, the Court grants Defendants' request. Plaintiffs and Defendants also request that the Court take judicial notice of excerpts from the County's website. (Docket Nos. 47-4, 48-2.) The Court denies those requests as moot because it does not rely on the website excerpts in deciding Defendants' Motion for Summary Judgment or Plaintiffs' Motion for Equitable Tolling.

[3] Another member of Recruit Class 156, Bryan Hunt, previously filed a collective action against the County that was removed to this Court on July 27, 2021. See Bryan Hunt v. City of Los Angeles, et al., Case No. 2:21-CV-06059 PA (RAOx) ("Hunt" or "Case No. 21-6059"). Similar to Hubbard's allegations in this action, Hunt alleged that the County violated the FLSA by not compensating him and similarly situated trainees for their time spent quarantining at the hotel in 2020. However, Hunt failed to timely file a motion for conditional certification of an FLSA collective, so the case proceeded as an individual action. On July 6, 2023, the Court granted the County's motion for summary judgment, finding that the time Hunt spent at the Hotel was not compensable. (Docket No. 66 in Case No. 21-6059.)

[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 [*6] on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322.

## III. Discussion

Defendants move for summary judgment on Plaintiffs' FLSA claims on the grounds that the claims are time-barred by the statute of limitations. Specifically, Defendants contend that Plaintiffs' FLSA claims are time-barred whether the FLSA's two-year or three-year statute of limitations applies. Plaintiffs, however, contend that their FLSA claims are timely because: (1) the claims are governed by the three-year statute of limitations for "willful" violations; and (2) the running of the statute of limitations should be equitably tolled from the date Plaintiffs filed their Consent Forms (January 30, 2024) back to the date Hubbard filed this action (March 8, 2023).

### A. FLSA Claims

A claim for unpaid overtime compensation under the FLSA is subject to a two-year statute of limitations. See 29 U.S.C. § 255(a). However, if an employer's violation of the FLSA was "willful," then the statute of limitations may be extended to three years. See id.; Alvarez v. IBP, Inc., 339 F.3d 894, 908 (9th Cir. 2003), aff'd, 546 U.S. 21, 126 S. Ct. 514, 163 L. Ed. 2d 288 (2005); McLaughlin v. Richland Shoe Co., 486 U.S. 128, 135, 108 S. Ct. 1677, 100 L. Ed.2d 115 (1988).

An FLSA claim accrues on the date that plaintiffs allege they should have been, but were not, compensated for their overtime hours worked. See Gessele v. Jack in the Box, Inc., 6 F. Supp. 3d 1141, 1151 (D. Or. 2014), as amended (May 15, 2014) ("[A]n FLSA [*7] claim accrues when the employer fails to pay the required compensation for any workweek at the regular payday for the period in which the workweek ends."); 29 C.F.R. § 790.21(b) ("The courts have held that a cause of action under the Fair Labor Standards Act for unpaid minimum wages or unpaid overtime compensation and for liquidated damages 'accrues' when the employer fails to pay the required compensation for any workweek at the regular pay day for the period in which the workweek ends.").

For a named plaintiff, the statute of limitations runs until "the date when the complaint is filed, . . . and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought." See 29 U.S.C. § 256(a) (emphasis added); Gessele, 6 F. Supp. 3d at 1158 (granting defendants summary judgment and finding that named plaintiffs' claims were time-barred because more than three years passed between the date their FLSA claims accrued and the date they filed their consent forms with the court); Cancilla v. Ecolab, Inc., No. C 12-03001 CRB, 2013 U.S. Dist. LEXIS 48553, 2013 WL 1365939, at *2 (N.D. Cal. Apr. 3, 2013) ("A collective action does not commence until a written consent is filed. The language of section 256 requires consents to be filed even for a claimant specifically named as a party plaintiff in the complaint." (internal citation omitted)). For opt-in plaintiffs, the statute [*8] of limitations runs until they file their consent forms with the court. See 29 U.S.C. § 256(b).

Hubbard completed his training and quarantining on April 27, 2020, and the last Recruit Class of Opt-in Plaintiffs completed their training and quarantining on November 25, 2020. Even assuming that the County waited until two weeks after each Plaintiffs' last training day to issue their final paychecks, the latest date on which Hubbard's FLSA claim could have accrued was May 11, 2020, and the latest date on which the Opt-in Plaintiffs' FLSA claims could have accrued was December 9, 2020. See, e.g., Cal. Lab. Code § 204 ("All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."). All Plaintiffs, including Hubbard, filed their Consent Forms on January 30, 2024. Accordingly, more than three years passed between the last date Plaintiffs' claims could have accrued and the date Plaintiffs filed their Consent Forms. Therefore, regardless of whether the two- or three-year statute of limitations applies, all Plaintiffs' FLSA claims would be untimely unless equitable tolling applies to revive the stale claims.

#### 1. Equitable [*9] Tolling

Plaintiffs request that the Court equitably toll the statute of limitations for their FLSA claims from the date they filed their Consent Forms (January 30, 2024) back to the date Hubbard filed the Complaint (March 8, 2023). "[T]he statute of limitations may be equitably tolled (1) when extraordinary circumstances beyond a plaintiff's control make it impossible to file a claim on time, or (2) when a plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant." Helton v. Factor 5, Inc., C 10-04927 SBA, 2011 U.S. Dist. LEXIS 136170, 2011 WL 5925078, at *2 (N.D. Cal. Nov. 28, 2011) (citing Stoll v. Runyon, 165 F.3d 1238, 1242 (9th Cir. 1999)).

Because Hubbard previously and unsuccessfully sought to have the statute of limitations equitably tolled, Plaintiffs' Motion for Equitable Tolling is, in essence, an untimely and insufficient motion for reconsideration. Specifically, in Hubbard's Motion for Conditional Certification of FLSA Collective Action (Docket No. 27), he requested that the Court equitably toll the statute of limitations for potential opt-in plaintiffs. The Court denied that request because Hubbard did not identify any extraordinary circumstances or wrongful conduct by Defendants to warrant tolling. (Docket No. 32.) In their new effort to have the Court equitably toll the statute of limitations, Plaintiffs [*10] rely solely on a case from the Eastern District of Michigan: Guy v. Absopure Water Co., LLC, No. 20-12734, 2023 U.S. Dist. LEXIS 208546, 2023 WL 8101844 (E.D. Mich. Nov. 21, 2023). Plaintiffs do not explain why they waited more than five months after the decision in Guy before seeking reconsideration. Additionally, Guy is not binding on this Court and is distinguishable from this action.[4] As before, the Court concludes that equitable tolling is not warranted because no "extraordinary circumstances" exist here, and because Defendants did not engage in the requisite "wrongful conduct." The Court therefore denies Plaintiffs' Motion for Equitable Tolling.

**2. Willfulness**

Even if the Court were to grant equitable tolling, Plaintiffs' FLSA claims would still be time-barred by the two-year statute of limitations because they have not shown that Defendants "willfully" violated the FLSA. "Courts may find willfulness only where the employer 'either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.'" Ackler v. Cowlitz Cnty., 7 F. App'x 543, 545 (9th Cir. 2001) (quoting McLaughlin, 486 U.S. at 133). "An employer need not violate the statute knowingly for its violation to be considered 'willful' under § 255(a) . . . although 'merely negligent' conduct will not suffice." Flores v. City of San Gabriel, 824 F.3d 890, 906 (9th Cir. 2016) (citing Alvarez, 339 F.3d at 908; McLaughlin, 486 U.S. at 133, 108 S. Ct. 1677); see also Alvarez, 339 F.3d at 909 ("[A court] will not presume that conduct was willful in the [*11] absence of evidence.").

Here, Plaintiffs have not put forth any facts demonstrating that Defendants "willfully" violated the FLSA. Rather, the County compensated Plaintiffs for the time they spent training at the Fire Academy (40 hours of regular time and 20 hours of overtime). The County did not require Plaintiffs to work while at the Hotel and therefore did not compensate them for that time. Moreover, the County consulted with Plaintiffs' Union prior to implementing the modified training program and compensation plan. Because Defendants did not willfully violate the FLSA, the applicable statute of limitations is two years. Accordingly, with or without equitable tolling, all Plaintiffs' FLSA claims are time-barred because more than two years passed between the date their claims accrued and the date they filed their Consent Forms

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[4] In Guy, the district court granted the opt-in plaintiffs' request to equitably toll the statute of limitations for their FLSA claims. The Guy Court explained: "[I]n light of the heightened standard under which district courts are to determine whether plaintiffs are similarly situated announced by Sixth Circuit's recent decision in Clark, 'district courts should freely grant equitable tolling to would-be opt-in plaintiffs.'" 2023 U.S. Dist. LEXIS 208546, [WL] at *4 (quoting Clark v. A&L Homecare & Training Ctr., LLC, 68 F.4th 1003, 1017 (6th Cir. 2023) (White, J., concurring in part)). In Clark, the Sixth Circuit explained that "plaintiffs must show a 'strong likelihood'" that potential opt-in plaintiffs are similarly situated to the named plaintiffs in order to obtain conditional certification of an FLSA collective. 68 F.4th at 1011; see id. at 1012 ("The heightened standard we announce, with its concomitant discovery and requirement to litigate defenses, may significantly lengthen the period before potential plaintiffs are notified of a pending FLSA lawsuit.") (Bush, J., concurring). However, the Sixth Circuit's "strong likelihood" standard differs from the more lenient standard applied in the Ninth Circuit. See Campbell v. City of Los Angeles, 903 F.3d 1090, 1101 (9th Cir. 2018) (defining "similarly situated" to mean that "party plaintiffs must be alike with regard to some material aspect of their litigation") (emphasis omitted); Saleh v. Valbin Corp., 297 F. Supp. 3d 1025, 1029 (N.D. Cal. 2017) ("For conditional certification . . . the court requires little more than substantial allegations, supported by declarations or discovery, that the putative class members were together the victims of a single decision, policy, or plan.").

with the Court.[5]

For all these reasons, the Court concludes that Defendants are entitled to summary judgment on Plaintiffs' FLSA claims.

**B. State Law Claims**

Pursuant to 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiffs' remaining state law claim for a writ of mandate. However, a district court can decline to exercise supplemental jurisdiction under § 1367(c)(3) if [*12] it has "dismissed all claims over which it has original jurisdiction." See also Exec. Software v. U.S. Dist. Court for the Cent. Dist. of Cal., 24 F.3d 1545, 1555-56 (9th Cir. 1994). Here, the Court has resolved Plaintiffs' FLSA claims over which it had original jurisdiction. Therefore, the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claim. See 28 U.S.C. § 1367(c)(3).

**Conclusion**

For the foregoing reasons, the Court finds that Defendants are entitled to summary judgment on Plaintiffs' FLSA claims because they are time-barred and because equitable tolling is not warranted. Accordingly, the Court grants Defendants' Motion for Summary Judgment, in part, and denies Plaintiffs' Motion for Equitable Tolling.[6] The Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claim for a writ of mandate and dismisses that claim without prejudice. Pursuant to 28 U.S.C. § 1367(d), this Order acts to toll the statute of limitations on the state law claim for a period of thirty (30) days, unless state law provides for a longer tolling period. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

JUDGMENT

In accordance with the Court's June 6, 2024 Minute Order granting, in part, the Motion for Summary Judgment filed by defendants County of [*13] Los Angeles and Anthony C. Marrone (collectively, "Defendants"), and denying plaintiff Bryan Hubbard and the 166 opt-in plaintiffs' (collectively, "Plaintiffs") Motion for Relief,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Defendants are entitled to summary judgment on Plaintiffs' FLSA claims for unpaid overtime wages;

2. Plaintiffs' claim for a writ of mandate is dismissed without prejudice;

3. Plaintiffs shall take nothing and Defendants shall have their costs of suit.

The Clerk is ordered to enter this Judgment.

DATED: June 7, 2024

/s/ Percy Anderson

Percy Anderson

United States District Judge

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[5] Plaintiffs contend that they would have filed their Consent Forms earlier, but the Court ordered all forms to be filed at the same time. However, even if Plaintiffs had signed and filed their Consent Forms on the same day the forms were mailed out (November 24, 2023), their FLSA claims would still be untimely under the two-year statute of limitations.

[6] The Court also grants Defendants' Motion for Summary Judgment for the same reasons it granted the County's motion for summary judgment in Hunt. (See Docket No. 66 in Case No. 21-6059.) That is, Plaintiffs were not required to work while at the hotel, and that time was not compensable pursuant to 29 C.F.R. §§ 553.226(c), 785.23. (See id.)