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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD T NEWTON, et al.,
Plaintiffs,

No. C 09-5887 VRW

JUDGMENT IN A CIVIL CASE

v.

ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of the State of California,
et al.,
Defendants.

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

In accordance with the Court's January 14, 2011 order granting defendants' motion for summary judgment and denying plaintiffs' motion for summary judgment, **IT IS SO ORDERED AND ADJUDGED** that judgment shall be entered in this case in favor of defendants and against plaintiffs.

Dated: January 14, 2011

Richard W. Wiekling, Clerk

By: Cora Klein
Deputy Clerk

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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD T NEWTON, et al,

No C 09-5887 VRW

Plaintiffs,

ORDER

v

ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of
the State of California, et al,

Defendants.

Plaintiffs in the above-captioned case seek declaratory relief against the Governor and other California officials who implement a worker furlough program. Doc #1. The court conditionally certified a class under the Fair Labor Standards Act ("FLSA"), 29 USC §§ 201 et seq, consisting of named plaintiffs Richard T Newton, Frank M McNeal and Sean A Beaton and all consenters to the action. Defendants Governor Arnold Schwarzenegger, Director of the California Department of Personnel Administration ("DPA") Debbie Endsley, Secretary of the California Department of Corrections and Rehabilitation ("CDCR") Matthew Cate,

1 Chief Deputy Secretary of the California Division of Juvenile
2 Justice ("DJJ") Bernard Warner and Director of the California
3 Department of Mental Health ("DMH") Stephen Mayberg move for summary
4 judgment on all claims, Doc #68, and plaintiffs cross-move for
5 summary judgment, Doc #77. The court heard argument on both motions
6 on January 13, 2011. For the reasons set forth below, the court
7 GRANTS defendants' motion, Doc #68, and DENIES plaintiffs' motion,
8 Doc #77, for summary judgment.

9
10 I

11 Unless otherwise noted, the following facts are not in
12 dispute. Plaintiffs are employed by the state in a variety of
13 correctional peace officer classifications at institutions run by
14 the CDCR, DJJ or DMH. Doc #1 ¶4. Newton is a correctional officer
15 at Eel River Conservation Camp, and McNeal and Beaton are
16 correctional officers at San Quentin State Prison. Id ¶5. The
17 court conditionally certified the case as a collective action, Doc
18 #48, and 11,835 individuals have consented. Doc #77 at 9; Doc #81
19 Markham Decl ¶4. Plaintiffs, including consenters, are non-exempt
20 employees in the California Correctional Peace Officers' Association
21 ("CCPOA") and are members of California Bargaining Unit 6 ("BU 6").
22 Doc #23 at 7 n3.

23 Beginning in December 2008 and continuing with California
24 Executive Order S-12-10 (July 28, 2010), plaintiffs have been
25 subjected to a furlough program mandating two to three days off per
26 month. The furlough program reduced plaintiffs' salaries. Doc #77
27 at 11. The Department of Personnel Administration ("DPA") applies a
28 negative differential to the salary to account for furlough days.

1 Doc #78 Harrison Decl Exh 22 at 3, Exh 26 at 3; Doc #77 at 11.

2 Plaintiffs seek prospective declaratory relief for violations of the
3 FLSA as well as attorney fees and costs.

4 Because plaintiffs are employed in facilities that never
5 close, management is instructed to find appropriate times for
6 employees to take furlough leave during a month; if time off is not
7 possible, employees accrue furlough leave to take in the future.

8 See Doc #78 Harrison Decl Exh 14. Plaintiffs allege that
9 defendants' implementation of the furlough policy requires them to
10 work on furlough days without monetary compensation for the promise
11 of a day off in the future. Doc #1 ¶3.

12 Plaintiffs may accrue furlough days for a period not to
13 exceed 24 months from the end of the furlough program. Doc #1 ¶9
14 and Exh E. At the end of the 24 months, any unused furlough days
15 revert to the state. Id ¶9. On July 1, 2009, Governor
16 Schwarzenegger issued Executive Order S-13-09 adopting a plan to
17 implement a third furlough day for state employees effective July 1,
18 2009 to June 30, 2010. That order directs that "all state employees
19 covered by the original and amended furlough plans must use their
20 accrued furlough days prior to using vacation, annual leave,
21 personal holiday, holiday credit, personal leave plan (PLP) credit,
22 and compensatory time off (CTO)." Doc #1 Exh F. Executive Order
23 S-12-10 continues the furlough program for employees of BU 6.

24 Plaintiffs are compensated by salary, which covers 164
25 hours of work in a 28 day period for correctional officers and 192
26 or 216 hours of work in a 28 day period for fire captains. Doc #77
27 at 9; Doc #91 at 13. Plaintiffs receive overtime compensation
28 pursuant to 29 USC § 207(k) when they work additional hours in the

1 28 day period. Id. Plaintiffs' salary per 28 day period is reduced
2 because of the furlough program. Doc #91 at 12 (defendants: "The
3 salary reduction * * * effectively reduced the hourly rate each
4 employee was being paid by either approximately 9.23% or 13.85%
5 depending on which furlough program was in place."); Doc #77 at 11
6 (plaintiffs: "Although the furlough program is actually a reduction
7 to time worked, it is functionally administered as a reduction to
8 the salary rate used in the calculation of the pay made to
9 employees.").

10
11 II

12 Defendants first argue they are immune from suit because
13 plaintiffs may only seek prospective relief and the furlough period
14 described in the complaint ended on June 30, 2010. Doc #68 at 19.
15 Plaintiffs counter that they seek declaratory relief that the
16 current furlough program under Executive Order S-12-10 violates the
17 FLSA. Doc #89 at 12-13; Doc #78 Harrison Decl Exhs 5 & 6. Under Ex
18 Parte Young, 209 US 123 (1908), plaintiffs may seek declaratory
19 relief against state officials in their official capacity.

20 Plaintiffs seek declaratory relief that the current
21 furlough program violates the FLSA and have presented some evidence
22 that the current program under Executive Order S-12-10 operates in a
23 manner substantially similar to the furlough program that expired in
24 June 2010. Doc #77 at 11. Accordingly, defendants' argument that
25 the furlough program expired in June 2010 falls short. Because the
26 relief plaintiffs seek falls within an exception to sovereign
27 immunity, the court reaches the merits of plaintiffs' claims for
28 declaratory relief.

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III

Under FRCP 56, the court may grant summary judgment if there is no genuine dispute about material facts and the moving party is entitled to judgment as a matter of law. The burden of establishing that there is no genuine dispute as to any material fact lies with the moving party. Celotex Corp v Catrett, 477 US 317, 322-23 (1986). Where the nonmoving party bears the ultimate burden of proof, the moving party may meet its burden by pointing to the absence of evidence to support the nonmoving party's case. Id at 325. Once the moving party has met its burden, either by presenting sufficient evidence to entitle it to a directed verdict at trial or by demonstrating the lack of evidence for the nonmoving party's case, FRCP 56(c) shifts to the nonmoving party the burden of presenting specific facts showing a genuine dispute for trial. British Airways Bd v Boeing Co, 585 F2d 946, 950-52 (9th Cir 1978). The court determines whether reasonable minds could differ over the import of the evidence after all inferences are drawn in favor of the nonmoving party. Eisenberg v Insurance Co of North America, 815 F2d 1285, 1288-1289 (9th Cir 1987).

A

Plaintiffs allege that defendants have failed to comply with the FLSA, 29 USC § 207, because defendants have not compensated plaintiffs for all nonovertime hours worked. Doc #77 at 7. Under 29 CFR § 778.315, an employee must be compensated for all hours worked, and overtime compensation "cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or

1 under any applicable statute has been paid." The parties do not
2 dispute the manner in which plaintiffs are compensated for their
3 work, described above. Instead, the parties dispute the proper
4 characterization of the compensation which in turn frames the
5 parties' arguments regarding the alleged FLSA violation.

6 Plaintiffs argue that the negative pay differential
7 provides plaintiffs with their standard compensation for non-
8 furlough hours but no compensation for furlough hours worked.
9 Plaintiffs assert that they receive no monetary compensation for
10 worked furlough hours and instead only receive future time off. In
11 Donovan v Crisostomo, the Ninth Circuit held that an employer
12 violated 29 USC § 207 and 29 CFR § 778.315 because the employer
13 required employees to pay kickbacks from their "straight time" wages
14 before compensating employees for overtime work. 689 F2d 869, 876
15 (9th Cir 1982). Plaintiffs compare Donovan to the furlough program
16 at issue here to argue that defendants withheld compensation for
17 furlough hours worked and in so doing failed to compensate
18 plaintiffs for all straight time hours worked in violation of the
19 FLSA overtime provisions.

20 Defendants assert that the pay differential should be
21 interpreted as a reduction for all hours worked, including furlough
22 hours. Because plaintiffs' salaries remain above the federal
23 minimum hourly wage even when reduced by the negative pay
24 differential, defendants argue that the furlough program does not
25 violate the FLSA. See Monahan v County of Chesterfield, Virginia,
26 95 F3d 1263, 1272 (4th Cir 2002) (holding that salaried employees
27 were properly compensated for all nonovertime hours worked because
28 their salaries amounted to more than the federal minimum wage).

1 summary judgment, Doc #77, is DENIED. The clerk is DIRECTED to
2 terminate all pending motions, enter judgment in favor of defendants
3 and close the file.

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VAUGHN R WALKER
United States District Judge

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