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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN MITCHELL an individual, on
behalf of himself and all others similarly
situated,

Plaintiff-Appellant,

v.

MEDTRONIC, INC., a Minnesota
Corporation,

Defendant-Appellee.

No. 15-55888

D.C. No.
2:13-cv-06624-MWF-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted February 10, 2017
Pasadena, California

Before: SCHROEDER and MURGUIA, Circuit Judges, and GLEASON,** District
Judge.

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

** The Honorable Sharon L. Gleason, United States District Judge for
the District of Alaska, sitting by designation.

Plaintiff-Appellant John Mitchell appeals the district court's decision to grant Defendant-Appellee Medtronic's motion to dismiss Appellant's claims pertaining to the calculation of overtime under the Fair Labor Standards Act (FLSA). A district court's order granting a motion to dismiss for failure to state a claim is reviewed de novo. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Under the FLSA, overtime is calculated from an employee's regular rate of pay. The "regular rate" under the FLSA means the hourly rate actually paid for the normal, non-overtime work week, *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944), and includes all remunerations paid to the employee, except for those payments exempt under the FLSA. One such exemption is for "extra compensation provided by a premium rate paid for certain hours worked . . . in excess of the employee's normal working hours." 29 U.S.C. § 207(e)(5). According to the Department of Labor's regulations, premium rates paid "pursuant to the requirements of another applicable statute" fall within the § 207(e)(5) exemption. *See* 29 C.F.R. § 778.202(d).

Medtronic's meal payments to its California employees were fully consistent with the payments mandated by California Labor Code § 226.7(c). Because Medtronic's meal payments were made pursuant to the statutory requirement of

Cal. Lab. Code § 226.7(c), they were properly excluded from the calculation of Medtronic's California employees' regular rate of pay.

AFFIRMED.