SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

IN RE GARDA WAGE AND HOUR CASES

Coordinated proceedings:

Kvist v. Garda CL West, Inc., Los Angeles Superior Court, Case No. BC 541779 (filed 4/4/14)

Cortez v. Garda CL West, Inc., Los Angeles Superior Court, Case No. BC 558892 (filed 9/28/14)

Phelen, et al. v. ATI Systems International, Inc. dba Garda Cash Logistics, Sacramento County Superior Court Case No. 34201400171707 (filed 11/17/14)

Dean v. Garda CL West, Inc., San Diego Superior Court Case No. 37-2015-00019396-CU-OE-CTL (filed 6/10/15)

De la Cruz et al. v. Garda CL West, Inc., San Benito Superior Court Case No. CU-15-00087 (filed 6/26/15)

Oliver v. Garda CL West, Inc., Los Angeles Superior Court, Case No. BC 603458 (filed 12/7/15)

Moreno et al. v. Garda CL West, Inc., Alameda County Superior Court, Case No. RG16807543, (filed 3/14/16)

Vizcaino et al. v. Garda CL West, Inc., Orange County Superior Court, Case No. 30-2017-00902861-CU-OE-CXC (filed 2/14/17)

Lane v. Garda CL West, Inc., et al, Los Angeles Superior Court, Case No. BC 673544 (filed 8/25/17)

Zaragosa v. Garda CL West, Inc., et al, Los Angeles Superior Court, Case No. BC 691897 (filed 1/26/18)

Case No. JCCP 4828

ORDER ON MOTION FOR SUMMARY ADJUDICATION ON FOURTH CAUSE OF ACTION AS TO PLAINTIFFS DEAN, GONZALEZ AND SLINKARD

Judge: Hon. William Highberger

Hearing Date: September 20, 2018
Time: 11:00 a.m.
Dept.: 10

Defendant Garda CL West, Inc. ("Defendant" or "Garda") has moved for summary adjudication of Fourth Cause of Action asserted by Plaintiffs Robert Dean, Celso Gonzales, and Richard Slinkard ("Plaintiffs"). Plaintiffs allege the failure to provide lawful meal periods whereby they were relieved of all duties for thirty minutes, and Garda contends it provided these three Plaintiffs with on-duty meal periods as permitted by Wage Order 9.[1] For the reasons set forth below, the Court GRANTS Garda's motion, finding that the undisputed material facts establish that the specific nature of the work of these three individuals prevented them from taking off-duty meal periods.

I. OVERVIEW OF MOTION AND THE DISPUTED LEGAL ISSUE

This is putative class action. Plaintiffs Dean, Gonzalez and Slinkard each worked for Garda as an armored car Driver/Messenger ("D/M"). (UMF[2] 1, 23, 40.) Wage Order 9 applies.

Wage Order 9 provides for two types of meal periods: (1) unpaid, off-duty meal periods or (2) paid, on-duty meal periods. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 [an employer's obligation is to provide the employee with *either* an unpaid, off-duty meal period *or* a paid, on-duty meal period].) On-duty meal periods are permissible if (a) the employee agrees to them in a revocable writing, (b) the meal periods are paid, and (c) the nature of the work prevents the employee from being relieved of all duty during the meal period. (Cal. Code Regs., tit. 8, § 11090, subds.(11)(A), (C).) Establishing valid on-duty meal periods is an affirmative defense.

Plaintiffs do not dispute that they were provided paid, on-duty meal periods pursuant to a valid and revocable agreement. The Court has independently reviewed Garda's motion and

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[1] Simultaneously, Garda sought summary adjudication with respect to the Third Cause of Action (seeking unpaid overtime wages) against (a) Plaintiffs Dean and Oscar Sosa on the grounds that they are subject to the Motor Carrier Exemption contained in Wage Order 9, section (3)(L)(1); and (b) Plaintiff Edward Phelen on the grounds that he is subject to the exemption Labor Code section 514 and Wage Order 9, section (3)(H). Garda also sought summary adjudication with respect to the Fourth Cause of Action (seeking meal period premiums) against Plaintiff Phelen on the grounds that his claim is barred by Labor Code section 512, subdivision (e). The Court has already granted all of these motions by separate order.

[2] All citations herein to a numbered "UMF" refer to the corresponding numbered fact(s) set forth in Garda's Separate Statement of Undisputed Material Facts.

submission, and it finds that Garda has established that there is no material, disputed fact as to these elements. As a result, the only contested issue is whether the nature of the work of each Plaintiff prevented Garda from relieving him of all duty during a 30-minute meal period. California law requires that employees on off-duty meal periods be relived of all duties, including the duty to respond to emergencies or remain in a specified location. (See *Madera Police Officers Assn. v. City of Madera* (1984) 36 Cal.3d 403, 412–413 [police officers' meal time was compensable when officers faced disciplinary action if they did not respond to citizen complaints during meal breaks]; *McFarland v. Guardsmark LLC* (N.D. Cal. 2008) 538 F.Supp.2d 1209, 1213 [holding that meal periods in which a security officer would remain responsible "to respond to any emergencies" are on-duty meal periods]; *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 974–975 (*Bono Enterprises*), *disapproved on other grounds by Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 573–574 (*Tidewater*) [meal periods were spent on-duty because the employer required employees to remain at the worksite during meal periods].) As a result, if the nature of the work prevents an employee from shedding one or more of his duties during his 30-minute meal period, such as the duty to remain vigilant or respond to emergencies, or it requires the employee to remain at or near a specific location, then the pertinent element is satisfied and on-duty meals periods are permissible.

The Division of Labor Standards Enforcement ("DLSE") has stated that the test for determining whether the nature of the work permits an on-duty meal period is an "objective test." (DLSE Opinion Letter 2009.06.09 at p. 7, https://www.dir.ca.gov/dlse/OpinionLetters-byDate.htm (June 9, 2009),)[3] "[T]he ***critical*** determination ... whether an on-duty meal period

[3] While informal DLSE pronouncements made outside the procedures of the Administrative Procedure Act are not entitled to significant weight in and of themselves (*Tidewater*, *supra*, 14 Cal. 4th at pp. 576-577), they are useful when they correctly interpret the law, as the June 9, 2009 DLSE letter does here. In this letter, the DLSE set forth five factors for consideration: "(1) the type of work, (2) the availability of other employees to provide relief to an employee during a meal period, (3) the potential consequences to the employer if the employee is relieved of all duty, (4) the ability of the employer to anticipate and mitigate these consequences such as by scheduling the work in a manner that would allow the employee to take an off-duty meal period, and (5) whether the work product or process will be destroyed or damaged by relieving the employee of all duty." (2009.06.09 Op. Ltr., *supra*, at p. 7.)

may be lawfully provided by an employer is whether the employer can establish that the facts and circumstances in the matter point to the conclusion that the nature of the work prevents the employee from being relieved of all duty." (*Ibid.*, italics added.)

II. SUMMARY ADJUDICATION STANDARD

The California Supreme Court has stated that the summary judgment and summary adjudication are not disfavored procedural vehicles and that such motions are a "particularly suitable means to test the sufficiency" of the plaintiff's claims and the defendant's defenses. (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542.) Garda seeks summary adjudication on the meal period claim of Plaintiffs Dean, Gonzalez and Slinkard Plaintiffs. If a defendant seeks summary adjudication based on an affirmative defense, it "'has the initial burden to show that undisputed facts support each element of the affirmative defense.'" (*Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289 (*Anderson*) [quoting *Bacon v. Southern Cal. Edison Co.* (1997) 53 Cal.App.4th 854, 858 (*Bacon*)].) Once the defendant meets this burden, "the burden shifts to plaintiff to show an issue of fact concerning at least one element of the defense." (*Bacon*, *supra*, at p. 858; accord *Anderson*, *supra*, 72 Cal.App.4th at p. 289; see also *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 72; Code Civ. Proc., § 437c, subd. (p)(2).)

Garda must submit substantial evidence, to establish that there is no material, disputed factual issue respecting the "nature of work" element for these three Plaintiffs.[4] Garda has submitted the declaration of an industry expert witness, whose opinions are uncontroverted, as well as the admissions of Plaintiffs themselves concerning their job danger and responsibilities. In doing so, Garda has met its initial burden, thereby shifting the burden to the three Plaintiffs to present evidence sufficient "to show an issue of fact concerning at least one element of the defense." (*Bacon*, *supra*, 53 Cal.App.4th at p. 858.)

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[4] Judgment can be entered against fewer than all of the named plaintiffs on a particular claim. Code of Civil Procedure section 437c "plainly contemplates circumstances" in which one or some parties are subject to judgment even though others are not. *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1208 .

To carry their burden, Plaintiffs must provide "substantial" evidence concerning the specific elements at issue. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162-163 (*Sangster*).) "For this purpose, responsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact." (*Id.* at 163.) Nor can Plaintiffs avoid summary adjudication by applying an improper legal analysis to the facts.

III. FACTUAL RECORD

The undisputed factual record demonstrates that the nature of Plaintiffs Dean, Slinkard, and Gonzalez's work prevented them from taking off-duty meal periods.

A. Undisputed Material Facts

Garda set forth the following Undisputed Material Facts. While Plaintiffs object to some of them (e.g., as ambiguous)[5], Plaintiffs do not offer substantial evidence to the contrary:

- Plaintiffs collected and transported currency and other high value items in the field. (UMF No. 42.)
- Plaintiffs worked in two-person crews, in which each member of the team had separate responsibilities and sat in different parts of the armored vehicle. (UMF Nos. 43–46.)
- "As Garda Driver/Messengers, Plaintiffs Slinkard, Gonzalez, and Dean carried firearms and maintained the necessary permits to do so." (UMF No. 62.)
- "Driver/Messengers must be alert while they are on their routes, because they are transporting valuable items in public." (UMF 63.)
- "Thieves target armored vehicles and the persons who operate them." (UMF 64.)
- "Members of the public could be injured or killed in the event of an attack on the Garda Driver/Messenger team or the armored vehicle." (UMF 65.)

[5] Plaintiffs' objections fail to comply with California Rules of Court, rules 3.1350(e)-(f), which requires that they be set forth in a separate document, and are overruled on that basis. Even were the Court to consider the objections set forth in their response to the separate statement of facts, the pertinent objections are without merit. By way of example, while Plaintiffs object to words like "thieves" and "target" (in UMF No. 64) and "alert" (UMF No. 63) as vague and ambiguous, the Court finds that these terms and the UMFs using them are clear and concise.

B. Expert Testimony

Garda has presented expert testimony of D. Mark Lowers, a consultant to the security and risk mitigation industry and President of the Secure Cash and Transport Association, describing in detail the risks that Driver/Messengers ("D/Ms") face in the field. Mr. Lowers opines that the type of work the three Plaintiffs performed is too dangerous to permit an off-duty and off-premises meal period while in the field, and that this risk cannot be avoided merely by adding more employees to the D/M team. (Lowers Decl. ¶¶ 14-19.) Plaintiffs offer no expert or industry testimony to the contrary.

Mr. Lowers' declaration describes how the various security precautions that Garda D/Ms take while transporting the liability are required because of the significant safety risks D/Ms face in the field. (Lowers Decl. ¶ 8.) This is because assailants are aware that D/Ms at all times carry large amounts of currency, coin, and other valuables, making them attractive targets. (*Ibid.*) Mr. Lowers explains that armored car robberies are especially violent—and frequently deadly. (*Id.* ¶ 10.) It is undisputed that, from 2007 to the present, Garda alone has experienced two homicides and 16 attempted homicides during the course of attempted robberies taking place while the D/Ms were en route to and from the Garda Armored Branch. (*Id.* ¶ 11.) None of these facts is controverted by Plaintiffs.

C. Plaintiff's Admissions

1. Plaintiff Dean

Plaintiff Dean drove a route that included long-distance travel between Arizona and San Diego, including a stop at a gold mine. (Dean Depo. at pp. 16:23–18:2, 21:2–4, 61:25–12.) Dean carried a firearm while driving his routes, explaining that the difference between the armored security business and other jobs delivering televisions or other lower-value items, is that "people will kill us for what we carry." (*Id.* at pp. 24:25–25:9.) These safety concerns led Dean to conclude that he must remain on "highest alert" whenever he was in the armored vehicle because thieves targeted armored vehicles, and when they did, "armored truck guys died." (*Id.* at pp. 26:19–27:2.) Dean explained that parking in a public place was "not good policy" because "it puts us at extra risk." (*Id.* at p. 151:8–15.) Dean acknowledged that Messengers were at greatest risk

when they left the vehicle (*id.* at pp. 56:14–57:2), and explained that even when the vehicle was parked, "even if I got a whole pizza in my mouth . . . I am still working. It's my job to--to protect my partner always" (*id.* at p. 83:1–20).

Most tellingly, Plaintiff Dean admitted the ultimate point when he testified that it was not "possible to take" an off-duty meal period, in which he would be "relieved of all duties … while working a Garda route." (UMF 72 [citing Dean Depo. at p. 90:19–24].)

2. *Plaintiff Slinkard*

Plaintiff Slinkard worked in Garda's Sacramento branch, and primarily delivered coins, cash, and checks. (Slinkard Depo. at pp. 37:9–13, 66:13–67:5.) Slinkard carried a firearm while driving this route, (*id.* at pp. 68:25–69:3), and recalled wielding it twice (*id.* at p, 69:7–14.) Slinkard testified that while working his route, he had to remain vigilant any time he was in the truck, whether it was moving or parked (*id.* at pp. 101:21–103:13, 136:14–22), any time he left the truck (*id.* at pp. 125:13–126:20), and any time he was in uniform in public (*ibid*). Specifically, Slinkard testified that while sitting in a parked armored vehicle he observed pedestrians, parked cars (to "see if they're parked, you know, for a quick get-away . . . or if they're parked normal"), and moving vehicles (to "[m]ake sure somebody doesn't . . . block the [armored] truck in, park in front . . . or behind" in an effort to prevent the truck from driving away during a robbery). (*Id.* at pp. 101:21–103:13.) Slinkard explained that, understanding he was at risk whenever he got out of the truck, he was always watchful; even in a McDonald's, Slinkard would "be canvassing the place" to make sure that no one was attempting to rob him or use him as "a hostage to try to get into the truck on the way back out." (*Id.* at pp. 125:22–126:20.)

Finally, like Plaintiff Dean, Mr. Slinkard admitted that nature of his actual assigned work prevented him from safely taking a 30-minute off duty meal period on his routes. Plaintiff Slinkard testified:

> Q Okay. Do you think that it was possible to have an off-duty meal period while you were on your route?
> A Not the way they have it right now. No.
> Q Okay. And why is that?
> A Because you have to maintain custody of the truck and the contents.

(Slinkard Depo., at pp. 124:23 – 125:4.) Plaintiff Slinkard further explained that that he "couldn't clock out and go away from the truck and leave the money on the truck" and he had to remain vigilant off the truck, even if he "went into, say, McDonald's to get a Coke" while "still in uniform." (*Id.* at pp. 124:23–125:21.)

3. *Plaintiff Gonzalez*

Plaintiff Gonzalez was employed in Garda's Oakland branch transporting currency. (Gonzalez Depo. at pp. 48:21–49:8.) Plaintiff Gonzalez testified that he had to remain vigilant *at all times* while working as a D/M, for "safety reasons" and out of a concern that he would get robbed. (*Id.* at pp. 42:25–43:9.) Because he understood there was a real risk of robbery while working as a D/M, Gonzalez wore a bullet proof vest. (*Id.* at pp. 26:18–27:5, 28:5–11, 46:5–20.) Gonzalez was "alert" and "watch[ed his] back all the time" while outside of the truck, working as a messenger, and remained vigilant even while sitting in the parked armored car. (*Id.* at pp. 63:24–64:3, 64:23–65:6.) Gonzalez remained vigilant "even when [he was] eating in the truck" because he was concerned about his own and his partner's safety. (*Id.* at p. 65:10–17.)

IV. PLAINTIFFS' LEGAL ARGUMENTS ARE INSUFFICIENT

Plaintiffs raise three arguments in opposition to summary adjudication: (1) Garda could have provided off-duty meal periods by adding a third employee to each team; (2) Garda could have allowed drivers to pull over and seek safety in third-party locations such as police stations; and (3) if Garda is allowed to provide on-duty meal periods to these Plaintiffs, then employees in scores of other positions ranging from bank tellers to grocery store clerks could agree to on-duty meal periods. Each of these arguments fails as matter of law.

1. Plaintiffs first contend that Garda could make off-duty meal periods available by adding a third D/M for each route. As an initial matter, this is speculation. Plaintiffs do not explain how the third D/M would make it possible for each member of the D/M team to take truly off-duty meal periods. D/Ms run remote routes, and any time a member of the D/M team is outside the armored vehicle while in the field, he is at risk of attack with the purpose of taking a hostage to gain access to the armored vehicle. Yet for a meal period to be truly off-duty, it must

be completely duty-free (no vigilance or emergency response requirement for thirty minutes) and away from the armored vehicle. (*Bono Enterprises*, *supra*, 32 Cal.App.4th at p. 975.)

Plaintiffs offer no expert or industry testimony that a three-member team would permit off-duty meal periods. For example, if each member of a three-person team was dropped off while the others continued the route (eventually looping back to pick him up), that D/M would be an particularly prone target who would need to remain alert, especially since he would have no partner monitoring him and even minimal casing would lead thieves to know that the armored vehicle would come back in 30 minutes to retrieve him. Moreover, this would also require multiple route changes, triggering preemption under the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501.[6] Plaintiffs' unsupported proposal is the kind of speculation that "is insufficient to establish a triable issue of material fact." (*Sangster*, *supra*, 68 Cal.App.4th at pp. 162-163.)

More to the point, Plaintiffs' supposition about a third employee is legally insufficient because California law does not require employers to restructure their basic operations to permit off-duty meal periods. Plaintiffs are proposing such a restructuring with a 50% increase in employees and associated labor costs. Guidance from the California Division of Labor Standards Enforcement indicates that an employer is not required to go to such extensive lengths. In its leading Opinion Letter on the subject, the DLSE addresses truck drivers who transport hazardous

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[6] Although the Ninth Circuit in *Dilts v. Penske Logistics, LLC* (9th Cir. 2014) 769 F.3d 637 (*Dilts*) held that the FAAAA did not *generally* preempt the application of California's meal period requirements to companies that transport property (769 F.3d at pp. 648-649), the Court noted that it is an open question whether the FAAAA may preempt California's wage and hour laws on an "as applied" basis, *i.e.*, in some cases as to some parties. (*Id.* at p. 648, fn. 2; accord *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1281.) At least one federal appellate court has held that federal law *can* preempt state court suits on an "as applied" basis. *Franks Investment Co. LLC v. Union Pac. Railroad Co.* (5th Cir. 2010) 593 F.3d 404, 414 ["state law actions can be preempted as applied if they have the effect of unreasonably burdening or interfering with rail transportation"].) This is consistent with California law. (*People v. Burlington N. Santa Fe Railroad* (2012) 209 Cal.App.4th 1513, 1528 [holding that "'state or local actions that are not facially preempted'" nonetheless "'may be preempted as applied'," if they "'would have the effect of preventing or unreasonably interfering with'" the federal scheme—in that case, railroad transportation].) Unlike the situation in *Dilts*, where the impact of the meal period requirements in that case necessitated only "*minor deviations* from [drivers'] routes, such as pulling into a truck stop" to take a meal period (*Dilts*, *supra*, 769 F.3d at p. 649, italics added), Plaintiffs' "third D/M" proposal would "interfere with [Garda's] ability to select its starting points, destinations, and routes," precisely what *Dilts* held *can* trigger FAAAA preemption. (*Ibid.*)

materials (gasoline) "from distributors located in and around the Bay Area to various service stations throughout the state of California and other, neighboring states," as well as to refineries and distributors. (DLSE Op. Ltr. 2009.06.09, *supra*, at p. 2.) Those recipients did "not permit the drivers to park and leave their vehicles unattended," and federal regulations similarly barred such conduct. (*Ibid.*) On these facts, the DLSE stated:

> [I]f the employee is relieved of all duties and thereby leaves the vehicle unattended, the Company will necessarily violate federal safety regulations, potentially resulting in citations and penalties for the Company. Further, if the vehicle is left unattended, the potential for explosion, leak or other adverse consequences exponentially increases, which would subject the Company to loss of product and liability to the employee and/or third [sic] for damages resulting from the explosion or leak. Under these facts and circumstances, it is clear that while the employee is engaged in fulfilling such responsibilities, he or she is not sufficiently relieved of all duty to have an off-duty meal period.

(*Id.* at p. 5.) In concluding that the use of on-duty meal periods in this situation was valid, the DLSE stated that requiring the drivers to monitor their vehicles during meal periods to avoid adverse consequences "is not unlike the monitoring of the continuous operation of machinery that is essential to the business of an employer." (*Id.* at p. 8.)

Notably, the DLSE did not suggest that the employer was required to hire and place a second driver in the truck to make off-duty meals possible. (See also DLSE Opinion Letter 1994.09.28 (Sept. 28, 1998), at p. 2, https://www.dir.ca.gov/dlse/OpinionLetters-byDate.htm [on-duty meal periods acceptable "where the employee is the only person employed in the establishment and closing the business would work an undue hardship on the employer," never suggesting the employer should just hire another employee].)[7]

As the foregoing DLSE Opinion Letters implicitly recognize, an employer is not required to go to any and all staffing lengths in order to provide off-duty meals. If it were true that paid, on-duty meal periods were impermissible simply because the employer could restructure its operations and hire another full-time worker to provide relief during an off-duty meal period, then

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[7] Plaintiffs rely on the suggestion in *Dilts* that motor carriers "may have to hire additional drivers or reallocate resources in order to maintain a particular service level," but *Dilts* made this comment in the context of the FAAAA preemption analysis not in the context of the "nature of the work" test. Moreover, the court made clear that it was finding only that "nothing more than a modestly increased cost" would trigger preemption – whereas here, Plaintiffs are proposing a 150% increase in labor costs as well as an untested restructuring of operations.

no employer would ever be allowed to provide paid, on-duty meal periods because it is hard to imagine any job that could not be modified to allow for off-duty meal periods, especially if expense and economic reasonableness were irrelevant.

California law will not permit this result. The on-duty meal period regulation is valid, it cannot construed in such a manner as to render it a nullity. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039 ["'An interpretation that renders statutory language a nullity is obviously to be avoided'"].)

2. Plaintiffs next contend that they could have safely taken off-duty meal periods by pulling off to the side of the road at a third-party location such as the parking lot of a police station. (Opposition at p. 13.) Mr. Lowers' testimony establishes that because of the unique nature of Plaintiffs' jobs, they could not "safely take a 30-minute meal period by simply pulling over to the side of the road or parking in a parking lot. Any time the armored vehicle is parked, the risk of armed attack increases, and this risk would increase even more if the vehicle was parked for a full 30 minutes as part of its scheduled route." (Lowers Decl. ¶ 15.) Plaintiffs do not address this opinion or provide any contrary opinion. (*Wynner v. Buxton* (1979) 97 Cal.App.3d 166, 172-173 ["competent opinion evidence by an expert which is wholly uncontradicted by any contrary opinion submitted in behalf of the opposing party" supports granting summary adjudication or judgment].)

Furthermore, Plaintiffs introduce no evidence, expert or percipient, to show that their "police station hypothesis" would work – they offer no evidence to suggest that police forces or other third parties would be willing to host a crime target on their premises while those charged with protecting that target went on a break. At oral argument, Plaintiffs' counsel suggested that off-duty meal periods could have been taken anywhere on the route if each Plaintiffs changed or covered up their uniforms. But thieves surveilling the armored vehicle are not likely to be fooled into thinking that a Plaintiff exiting the vehicle is not a departing D/M simply because he is trying to cover his uniform. Moreover, there is no disguising an armored vehicle. In short, Plaintiffs offer no industry or other expert evidence that such a scheme could work.

Such uncorroborated "speculation" is insufficient to defeat summary adjudication. (*Sangster*, *supra*, 68 Cal.App.4th at p. 163.) Indeed, if a plaintiff could defeat a nature of the work argument by simply speculating about some theoretical way in which an employer could offer an off-duty meal period without providing any evidence that such a proposal would actually work in practice, then the regulation would be an effective nullity.

3. Finally, Plaintiffs contend that if this motion is granted, that will somehow mean that on-duty meal periods are also permissible for a host of other employees such as bank tellers and grocery cashiers. (Opposition at p. 10.) This argument fails and actually confirms that the relatively unique nature of the work of these three Plaintiffs. Unlike Plaintiffs here, bank tellers are not handling large amounts of money in the field – they operate in a secured location with multiple co-employees who can easily relieve them. The same is true of cashiers. Neither position presents the unique challenges and hazards that these three Plaintiffs all admit they faced on their specific routes.

V. CONCLUSION

For the foregoing reasons, the undisputed material facts show that the nature of work performed by Plaintiffs Dean, Gonzalez and Slinkard prevented them from taking off-duty meal periods. That is the only element of Garda's affirmative defense that is controverted by Plaintiffs. The legal arguments that Plaintiffs advance are inadequate to avoid summary adjudication. The Court accordingly GRANTS Garda's motion for summary adjudication as to Plaintiffs' Fourth Cause of Action, as to Plaintiffs Dean, Gonzales and Slinkard.

Dated: ~~October~~ Nov. 6, 2018

W. F. Highberger

Honorable William Highberger
Judge, California Superior Court for the County of Los Angeles