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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SERGIO COTA, individually and on
behalf of all others similarly situated,
Plaintiffs,

vs.

FRESENIUS USA, INC., et al.,
Defendants.

CASE NO. 18cv1163-LAB (AGS)

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT [Dkt. 36]**

17 Plaintiff Sergio Cota worked for Defendant Fresenius USA
18 Manufacturing, Inc. ("FUSA Manufacturing," and together with its parent and
19 co-defendant Fresenius USA, Inc., "Defendants") as a truck driver from May
20 21, 2008 through April 19, 2017. While he worked there, he alleges,
21 Defendants violated California's labor laws relating meal periods, rest breaks,
22 and overtime compensation. He also alleges derivative claims for failure to pay
23 wages due upon termination, failure to provide accurate itemized wage
24 statements, violation of California's Unfair Competition Law ("UCL"), and
25 violation of the California Private Attorneys General Act ("PAGA").

26 After Cota filed his claims, the Secretary of Transportation, acting
27 through the Federal Motor Carrier Safety Administration ("FMCSA"), declared
28 that the Motor Carrier Safety Act of 1984 (the "MVCSA") preempted California

1 meal and rest break rules insofar as they purport to apply to commercial motor
2 vehicle drivers. The FMCSA then released an opinion stating that its
3 December 2018 declaration applies to any future enforcement of those
4 statutes, regardless of whether the alleged misconduct occurred before it
5 issued that declaration.

6 After the Ninth Circuit took up on appeal another action involving
7 FMCSA's preemption decision, *Int'l Bhd. of Teamsters, Local 2785 v. FMCSA*,
8 Case No. 19-73488, the parties jointly moved to stay this case on the ground
9 that they expected the decision in that case to be "controlling" in this case. (Dkt.
10 26 at 2.) The Court granted that motion. The Ninth Circuit then upheld
11 FMCSA's preemption determination but found that FMCSA's opinion on
12 retroactivity was not a reviewable final agency action. *Int'l Bhd. of Teamsters*,
13 *Local 2785 v. FMCSA*, 986 F.3d 841, 858 n.5 (9th Cir. 2021).

14 Defendants moved for summary judgment, contending that Cota's meal
15 and rest break causes of action were barred by preemption, his overtime cause
16 of action failed because commercial motor vehicle drivers are exempted from
17 California's overtime requirements, and the remainder of Cota's claims are
18 derivative. Cota opposed only on the ground that FMCSA's preemption
19 decision didn't apply to conduct occurring before December 2018. But because
20 the plain language of 49 U.S.C. § 31141 provides that preempted state laws
21 can't be enforced, because Cota was exempt from the protection of California's
22 overtime statute, and because the remainder of Cota's claims can't stand
23 without other supporting violations, Defendants' Motion for Summary
24 Judgment is **GRANTED**.

25 **DISCUSSION**

26 A party is entitled to summary judgment "if the movant shows that there
27 is no genuine dispute as to any material fact and the movant is entitled to
28 judgment as a matter of law." Fed. R. Civ. P. 56(a).

1 **I. Cota’s First and Second Causes of Action Rely on**
2 **Unenforceable Statutes**

3 Under 49 U.S.C. § 31141, “[a] State may not enforce a State law or
4 regulation on commercial motor vehicle safety that the Secretary of
5 Transportation decides under [the MVCSA] may not be enforced.” FMCSA, on
6 behalf of the Secretary of Transportation, declared that California’s meal and
7 rest break rules as applied to drivers of commercial vehicles were preempted
8 by MVCSA, an action that the Ninth Circuit found “reflects a permissible
9 interpretation of [MVCSA].” See *California’s Meal and Rest Break Rules for*
10 *Commercial Motor Vehicle Drivers*, 83 Fed. Reg. 67,470 (Dec. 28, 2018); *Int’l*
11 *Bhd. of Teamsters*, 986 F.3d at 846. Cota’s first and second causes of action
12 are for alleged violations of these preempted rules. (See First Am. Compl., Dkt.
13 7, ¶¶ 39–55; 83 Fed. Reg. 67,472–80).

14 Cota argues that his claim should survive because he alleges violative
15 conduct prior to FMCSA’s preemption determination. But the language of
16 section 31141 is plain: preemption affects the *enforcement* of state laws. The
17 Court can’t enter judgment for violations of unenforceable laws, regardless of
18 whether the offending conduct occurred while those laws were still
19 enforceable. The Court **GRANTS** summary judgment in Defendants’ favor on
20 Cota’s first and second causes of action.

21 **II. Cota’s Overtime Claim Fails as a Matter of Law**

22 Cota’s third cause of action alleges that Defendants failed to pay
23 overtime compensation under Cal. Labor Code §§ 226, 510, and 1194. Those
24 statutes do not apply to transportation industry employees who “operat[e] . . .
25 [a] commercial motor vehicle with a gross vehicle weight rating of 26,001 or
26 more pounds.” Cal. Vehicle Code § 34500(k); Wage Order No. 9-2001 § 3(L)
27 (exempting from IWC Wage Order 9 “employees whose hours of service are
28 regulated by . . . [13 C.C.R. §§ 1200 et seq.]”); 13 C.C.R. § 1200 (“The

1 provisions of this chapter shall apply to vehicles listed in [Cal. Vehicle Code
2 § 34500].”).¹

3 Cota is a transportation industry employee within the meaning of Wage
4 Order 9. That Order defines “Transportation Industry” as “any industry,
5 business, or establishment operated for the purpose of conveying persons or
6 property from one place to another whether by rail, highway, air, or water, and
7 all operations and services in connection therewith.” Wage Order No. 9-2001
8 § 2(P). FUSA Manufacturing’s business is the distribution and delivery of
9 certain products throughout the country—in other words, transportation.
10 (Dkt. 36-8 ¶ 3). And Cota’s work for that business consisted of operating
11 commercial vehicles with gross vehicle weight ratings of over 34,000 pounds.
12 (*Id.* ¶¶ 18–19; see *also* First Am. Compl., Dkt. 7, ¶ 23). Cota doesn’t dispute
13 these facts, and they are enough to bring him outside the coverage of the
14 overtime statutes his third claim relies on. The Motion for Summary Judgment
15 is **GRANTED** as to that claim.

16 **III. Cota’s Remaining Claims Are Derivative of his First Three** 17 **Claims**

18 Cota’s remaining claims fall into two categories. In the first category, his
19 fourth and fifth causes of action assert violations premised on the theory that
20 Defendants failed to pay him overtime. He alleges that, because he was owed
21 and not paid wage premiums for overtime, meal periods, and rest breaks,
22 Defendants did not pay him all his wages upon termination of his employment,

23 ¹ 13 C.C.R. § 1200(b) contains two exceptions. The first is for “vehicles used
24 primarily off the highway and not required to be registered pursuant to [Cal.
25 Vehicle Code § 4000(a)],” 13 C.C.R. § 1200(b)(1), which does not require
26 registration of vehicles “driven, moved, or left standing in an offstreet public
27 parking facility.” And the second is for vehicles transporting hazardous
28 materials under Cal. Vehicle Code § 34500(g) but not covered by other
subsections of that statute. 13 C.C.R. § 1200(b)(2); Cal. Vehicle Code
§ 34500(g). Neither exception applies here. (See Dkt. 36-8 ¶¶ 18–20).

1 and its wage statements inaccurately reflected the amount he was owed.² But
2 as discussed above, he can't establish that he had a right to those wage
3 premiums. His claims for failure to timely pay and properly detail wages he
4 wasn't owed fail as a matter of law. The Court **GRANTS** the Motion for
5 Summary Judgment as to those claims.

6 Cota's sixth and seventh causes of action under the UCL and PAGA are
7 in a second category: claims that always require an underlying violation of
8 some other California law. See *Cel-Tech Commc'ns, Inc. v. Los Angeles*
9 *Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (UCL's "unlawful" element
10 requires plaintiff to identify violation of another law); *Price v. Starbucks Corp.*,
11 192 Cal. App. 4th 1136, 1147 (2011) (PAGA fail claims where underlying
12 causes of action fail). Because each of Cota's other claims fail, the UCL and
13 PAGA claims must fail, too. The Court **GRANTS** the Motion for Summary
14 Judgment as to those claims.

15 **CONCLUSION**

16 Cota's wage and rest period claims relied on unenforceable California
17 state law. His overtime claim overlooked that he was exempted from the
18 overtime protections he relied on. His other wage-related claims were

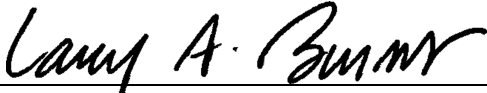
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25 ² The First Amended Complaint also alleges that Defendants' wage statements
26 "inaccurately understated . . . hours" and did not identify "the name and address
27 of the legal entity that is the employer." (FAC ¶¶ 22, 70). But he doesn't allege
28 any facts to support these recitations of Cal. Labor Code § 226(a), and mere
conclusions aren't enough to defeat summary judgment. *Rivera v. National
R.R. Passenger Corp.*, 331 F.3d 1074, 1078 (9th Cir. 2003).

1 derivative of the first three failed claims, and his UCL and PAGA claims can't
2 stand without the support of another claimed violation of law. Defendants'
3 Motion for Summary Judgment is **GRANTED**. The Court enters judgment in
4 Defendants' favor, and the Clerk is directed to close the case.

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Dated: March 14, 2022



HON. LARRY ALAN BURNS
United States District Judge