

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

ALBERT H. CICAIIROS et al.,

Plaintiffs and Appellants,

v.

SUMMIT LOGISTICS, INC.,

Defendant and Respondent.

C048133

(Super. Ct. No.
CV014837)

ORDER MODIFYING
OPINION AND DENYING
REHEARING
[No Change in
Judgment]

THE COURT:

It is ordered that the opinion filed herein on October 27, 2005, be modified as follows:

1. After "*Ibid.*" at the end of the second full paragraph on page 3, add:

, see *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8 [though not binding, agency interpretation may be helpful].

2. Delete the full paragraph which begins at the bottom of page 17 with "An opinion letter from DLSE"

3. Delete the full paragraph on page 20 which begins with "[A]s long as an employer"

4. Delete the first sentence of the last paragraph on page 20 which begins with "Although the defendant was not required" Insert in place of the deleted sentence, the following text:

Although the defendant was not required to keep records of the plaintiffs' rest breaks and the collective bargaining agreement authorized rest breaks, the defendant could still be liable if the plaintiffs did not take their full 10-minute rest breaks because, as a practical matter, the defendant did not *permit* the plaintiffs to take their rest breaks. (See Cal. Code Regs., tit. 8, § 11090, subd. (12)(A) [employer must authorize *and permit* rest period].)

This modification does not change the judgment.

The petition for rehearing is denied. (*CERTIFIED FOR PUBLICATION.*)

THE COURT:

NICHOLSON, Acting P.J.

RAYE, J.

ROBIE, J.