

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHNNY MCFARLAND, on behalf of
himself and all others similarly
situated,

Plaintiff-Appellant,

v.

GUARDSMARK, LLC,

Defendant-Appellee.

No. 08-16953

D.C. No.
3:07-cv-03953-PJH

ORDER

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted November 6, 2009*
San Francisco, California

Filed December 9, 2009

Before: Procter Hug, Jr., Pamela Ann Rymer and
M. Margaret McKeown, Circuit Judges.

COUNSEL

Daniel H. Qualls, Robin G. Workman, Qualls & Workman,
San Francisco, California, for the plaintiff-appellant.

Martin D. Bern, Malcolm A. Heinicke, Munger, Tolles &
Olson LLP, San Francisco, California; Fred A. Rowley, Jr.,

*The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Munger, Tolles & Olson LLP, Los Angeles, California, for the defendant-appellee.

ORDER

Johnny McFarland (“McFarland”) appeals from the district court’s decision denying his motion for partial summary judgment and granting partial summary judgment to Guardsmark, LLC in this dispute arising under Cal. Labor Code § 512. *McFarland v. Guardsmark, LLC*, 538 F. Supp. 2d 1209 (N.D. Cal. 2008). The district court dismissed the remaining claims upon stipulation of the parties. We affirm for the reasons set out in the district court’s thorough decision.

McFarland raises for the first time on appeal the factual issue of whether his signed employment agreement represents an actual agreement to take two on-duty meal periods in a single day. As McFarland did not raise this issue before the district court, *see id.*, we do not consider it here. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.

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