

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NICHOLAS ZENDEJAS, an individual,)
)
 Plaintiff,)
)
 v.)
)
 J. B. HUNT TRANSPORT, INC.,)
 a Georgia corporation,)
)
 Defendant.)

No. 2:10-CV-00631 REJ

OPINION AND ORDER

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JONES, Judge:

This action for overtime pay is before the court on defendant's motion (# 41) for partial summary judgment. Specifically, defendant seeks a determination as a matter of law on two issues: (1) whether the Fair Labor Standards Act ("FLSA") preempts plaintiff's Arizona common law and Arizona statutory claims; and (2) the proper method of calculating plaintiff's damages, if any.

The court denies the motion as premature. The motion states as a premise that "for purposes of this Motion only, [assume] that [defendant] improperly categorized Plaintiff as an exempt employee and now must compensate him for unpaid overtime hours. . . ." Defendant's Motion for Partial Summary Judgment, p. 2. I am unwilling to "assume" FLSA liability for the purpose of reaching past liability to issues of state law preemption and overtime damages, having once been reversed after expending extraordinary judicial resources determining FLSA and state law overtime damages before the issues of FLSA and state law liability were fully resolved. See In re Farmers Ins. Exchange, 466 F.3d 853 (9th Cir. 2006), opinion amended and superseded on denial of rehearing 481 F.3d 1119 (9th Cir. 2007).

Consequently, defendant's motion (# 41) is DENIED.

IT IS SO ORDERED.

DATED this 5th day of May, 2011.

/s/ Robert E. Jones
ROBERT E. JONES
U.S. District Judge