

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIE CAMPANELLI, et al.,)
)
Plaintiff(s),) No. C 08-1862 BZ
)
v.)
)
THE HERSHEY COMPANY,) **ORDER RE CALCULATION**
) **OF OVERTIME DAMAGES**
Defendant(s).)
)
_____)

Defendant the Hershey Company has moved for "partial summary judgment" on the issue of the amount of unpaid overtime it would owe plaintiffs should it be found liable for violating the Federal Labor Standards Act.¹ Docket No. 303. Relying on the Supreme Court decision in Overnight Motor Transp., Co. v. Missel, 316 U.S. 572, 578 (1941), Hershey asserts that if plaintiffs prevail on liability, they can only recover 50% of their regular rate of pay, which is determined by dividing their compensation for a given work week by all hours worked in that week. Ultimately, resolution of this

¹ Hershey's motion does not seek relief regarding the calculation of overtime damages under California law, and this Order does not address it.

1 issue turns on whether there was a "clear mutual
2 understanding" between Hershey and plaintiffs that the fixed
3 salary that plaintiffs would receive was to compensate
4 plaintiffs for all hours worked whatever their number. See
5 Russell v. Wells Fargo, 672 F.Supp.2d 1008, 1012 (N.D. Cal.
6 2009) and cases collected therein.² Hershey has presented
7 evidence from several plaintiffs that they had such an
8 understanding. Plaintiffs have presented evidence that
9 Hershey was compensating plaintiffs on the basis of a 38.75
10 hour work week, or "eight hours a day," as well as testimony
11 of some plaintiffs that they reached no understanding on
12 overtime with Hershey. This conflicting evidence presents a
13 triable issue of fact. **IT IS THEREFORE ORDERED** that Hershey's
14 motion is **DENIED**.

15 Dated: February 22, 2011

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17 Bernard Zimmerman
18 United States Magistrate Judge

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25 ² Hershey's stubborn reliance on Urnikis-Negro v. Am.
26 Family Prop. Servs., 616 F.3d 665 (7th Cir. 2010), is
27 misplaced. The Seventh Circuit affirmed a 50% premium award
28 after a trial, at which the court found that "Urnikis-Negro
understood at the time of her hiring that her fixed salary was
intended to cover all the hours she worked, even if they
exceeded 40 hours per week." Id. at 670.