

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-01986-RPM

APRIL N. COLEMAN,
JAMES APODACA,
CHERYL BARTTELS,
WILLIAM S. WARFORD,
STERLING NELOMS and
RICHARD BOGART,

Plaintiffs,

INTEGRATING TECHNOLOGY AND STANDARDS, INC.,
d/b/a IRON WOMAN CONSTRUCTION AND ENVIRONMENTAL SERVICES, INC. and
SHAWN S. EGAN,

Defendants.

ORDER DENYING DEFENDANTS' SUMMARY JUDGMENT MOTION

On November 17, 2008, the defendants submitted a Rule 12(b)(6) motion to dismiss or in the alternative Rule 56 motion for summary judgment, addressing the plaintiffs' complaint seeking relief for unpaid overtime compensation pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, by asserting that the exemption under Section 213(b)(1) is applicable because the employer is an interstate motor vehicle carrier. The plaintiffs have responded and submitted affidavits concerning their employment. The Court has identified the motion as being a motion for summary judgment under Rule 56. Upon review of the papers filed, the Court concludes that there are material issues of fact concerning the employment of the individual plaintiffs which preclude summary judgment determining the exemption as to each of them. It is therefore

ORDERED that the defendants' motion for summary judgment is denied.

DATED: January 26th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge