

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

EZEQUIEL OLIVARES ABARCA,  
individually and on behalf of all those  
similarly situated; ALFREDO ALESNAJR.,  
individually and on behalf of all those  
similarly situated; DAVID CAGLE,  
individually and on behalf of all those  
similarly situated; STEPHEN L. DAVIS,  
individually and on behalf of all those  
similarly situated; FRANK EADS,  
individually and on behalf of all those  
similarly situated; and KENNETH J.  
SURMAN, individually and on behalf of all  
those similarly situated;

Plaintiffs,

vs.

WERNER ENTERPRISES, INC., DOES 1-  
100, inclusive; and DRIVERS  
MANAGEMENT, LLC,

Defendants.

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WILLIAM SMITH, on behalf of himself, all  
others similarly situated, and on behalf of  
the general public;

Plaintiff,

vs.

WERNER ENTERPRISES, INC., a  
corporation; and DOES 1-100, inclusive;

Defendants.

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BRIAN VESTER, individually and on behalf  
of all others similarly situated; and JOEL

**8:14CV319  
(LEAD)**

**8:15cv287  
(MEMBER)**

MORALES, individually and on behalf of all others similarly situated;

Plaintiffs,

vs.

WERNER ENTERPRISES, INC., and  
DRIVERS MANAGEMENT, LLC,

Defendants.

**8:17cv145  
(MEMBER)**

MEMORANDUM AND ORDER

This matter is before the Court on the defendant's motion for partial summary judgment, Filing No. 243 in 8:14CV319; Filing No. 149 in 8:15CV287; and Filing No.112 in 8:17cv145. These are consolidated class actions for alleged violations of Nebraska and California wage and hour laws. This Court has jurisdiction under the Class Action Fairness Act, [28 U.S.C. § 1332\(d\)](#) ("CAFA").

Defendants Werner Enterprises, Inc., and Drivers Management, LLL (collectively, "Werner or defendant"), move for summary judgment on the meal and rest break claims under California law. Werner relies on a recent Federal Motor Carrier Standards Administration ("FMCSA") ruling that California's meal-and rest-break rules ("MRB Rules"), Cal. Lab. Code §§ 226.7, 512, 516; 8 C.C.R. § 11090, are preempted and unenforceable "with respect to drivers of property-carrying [commercial motor vehicles] subject to FMCSA's [Hours of Service ("HOS")] rules." See *California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers*; [Petition for Determination of Preemption](#), 83 Fed. Reg. 67470-1, 2018 WL 6809341 (Dec. 28, 2018) ("FMCSA Order").

The validity and effect of the FMCSA order is presently on appeal to the Ninth Circuit Court of Appeals in several consolidated cases. See *Int'l Brotherhood of Teamsters, et al v. FMCSA*, No. 18-73488 (9<sup>th</sup> Cir.)(Lead); *IBT, et al v. FMCSA, et al*, No. 19-70323 (9<sup>th</sup> Cir.) (Consolidated); *Labor Comm'r State of Cal. v. FMCSA*, No. 19-70329 (9<sup>th</sup> Cir. Consolidated); *Duy Ly, et al v. FMCSA, et al*, No. 19-70413 (9<sup>th</sup> Cir.) (Consolidated). Under [49 U.S.C. § 31141\(f\)](#) and [28 U.S.C. § 2342\(3\)\(A\)](#), federal appeals courts have exclusive jurisdiction to enjoin, set aside, suspend, or determine the validity of FMCSA preemption determinations.

Those actions have been fully briefed and are being considered for oral argument in June, July, or August of this year. See *Int'l Brotherhood of Teamsters, et al v. FMCSA*, No. 18-73488, Filing No. 89 (9th Cir. Feb. 7, 2020). The deadline for filing motions to dismiss and motions for summary judgment in this case is April 2, 2021. It thus appears that deferring judgment on this motion will not delay progression of the case. Because the Ninth Circuit's determination will likely be dispositive of the issue presented in the defendant's motion, the Court will defer ruling on the motion at this time. Accordingly,

IT IS ORDERED that the defendant's motions for summary judgment (Filing No. 243 in 8:14CV319; Filing No. 149 in 8:15CV287; and Filing No. 112 in 8:17cv145) are denied without prejudice to reassertion.

Dated this 26th day of February, 2020.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge