

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JEFF MEYERS,  
et al.

Plaintiffs,

v.

LAZER SPOT, INC., et al.

Defendants.

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Civil No. L-05-3407

**MEMORANDUM**

This is a collective action by a group of yard jockeys seeking unpaid overtime wages from their employer. Plaintiffs Jeff Meyers, Michael Dixon and 18 others bring claims under the Fair Labor Standards Act (“FLSA”) and the Maryland Wage & Hour Law (“MWHL”) against Defendant Lazer Spot, Inc. (“Lazer Spot”) and its President, Wes Newsome (“Newsome”). Discovery is now complete and both parties have moved for summary judgment.<sup>1</sup>

The sole issue in this case is whether the Plaintiffs fall within the Motor Carrier Act exemption to the overtime requirements of the FLSA. As explained more fully below, there are material questions of fact as to whether the exemption applies, including: (i) whether Lazer Spot and its employees are engaged in interstate commerce; (ii) whether Lazer Spot’s jockey vehicles are “commercial motor vehicles” within the meaning of the Motor Carrier Act; and (iii) whether the Plaintiffs’ safety-affecting activities are so trivial and insignificant as to fall within the “de minimis” exception to the Motor Carrier Act exemption. Because each of these questions must be resolved by a jury at trial, the Court will, by separate order, DENY the instant motions for

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<sup>1</sup> More precisely, the Plaintiffs have moved for summary judgment only on their claim that they are entitled to overtime compensation. See Pl.’s Mem., Docket No. 75, at 22. (“The amount of [] wages [owed] can be decided [] through supplemental briefing or at trial.”) The Defendants have moved for summary judgment on all claims.

summary judgment.

## **I. Background**

Defendant Lazer Spot provides third party yard management services to manufacturers and consumer goods companies. Among such services, Lazer Spot employs “yard jockeys” (or “spotters”) to relocate trailers on its customers’ properties. Beginning in 2003, Lazer Spot contracted with Unilever, a multinational producer of liquid laundry soap, to spot trailers at Unilever’s Baltimore plant.

The Plaintiffs in this case are current and former yard jockeys at Unilever’s Baltimore facility. They were hired by Lazer Spot, paid on an hourly basis, and had no employment relationship with Unilever. At all times relevant to this lawsuit, the Plaintiffs drove tractor-type vehicles (“jockey vehicles”) to haul both empty trailers and trailers loaded with wooden pallets around Unilever’s warehouse yard. Each of the jockey vehicles contains a single seat and is incapable of traveling at high speeds.

As will become clear later in the Court’s analysis, the weight of the jockey vehicles is a hotly contested subject. In support of their motion for summary judgment, the Defendants have submitted what purport to be manufacturers’ certificates of origin for the vehicles used at the Unilver facility. Def.’s Mem., Docket No. 72, Ex. H. The certificates attest that each of the vehicles weighs more than 14,000 pounds. Id. In opposition to the Defendants’ certificates, the Plaintiffs have offered the affidavit of Jeff Meyers, in which Meyers states that he “believes” the vehicles weigh less than 10,000 pounds. Pl.’s Mem., Ex. 4.

In addition to hauling trailers on Unilever’s private property, the Plaintiffs sometimes hauled trailers to and from a satellite lot (“the overflow lot”) located approximately one-eighth of

a mile from Unilever's main facility. In order to reach the overflow lot, the Plaintiffs were required to drive up and down Holabird Avenue, a two-lane public road in Baltimore City. How often this occurred is a matter of some dispute - according to the Defendants, the Plaintiffs drove on Holabird Avenue "each and every day, and many times a day." Def.'s Mem, Docket No. 72, at 8. The Plaintiffs maintain, however, that "there is no record evidence" of how frequently such trips took place. Pl.'s Reply, Docket No. 79, at 14.

After picking up trailers from the overflow lot, the Plaintiffs drove back onto Holabird Avenue, re-entered the Unilever plant, and deposited the trailers in front of a warehouse for loading. The trailers were then loaded by Unilever employees and hauled to out-of-state distribution centers by independent long-haul trucking companies.

The parties disagree as to whether, when the Plaintiffs left trailers at Unilever's facility for loading, Unilever intended to ship the trailers to specific out-of-state destinations. According to Lazer Spot President Wes Newsome, Unilever would typically identify where a particular load was to be transported, and the Plaintiffs would then be required to select a trailer designated for that location. Def.'s Mem., Docket No. 72, at 4. At his deposition, Wes Newsome testified that the Plaintiffs were provided with lists matching specific trailers with specific destinations, making it "easier for them to know what trailers they could load to certain parts of the country."<sup>2</sup> Id., Ex. D, at 99. In an attachment to Newsome's deposition, Lazer Spot submitted two documents purporting to be lists distributed to jockeys at the Unilever plant. Id., Dep. Exhibits 7 & 8.

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<sup>2</sup> Newsome also testified, however, that he rarely visited the Unilever site after it opened in 2003. Pl.'s Reply, Docket No. 79, Ex. 2, at 75.

In opposition to Newsome’s testimony, the Plaintiffs rely on the deposition of Marilyn Goodwin, a former site manager at Unilever’s Baltimore plant. Unlike Newsome, Goodwin was an everyday presence at the Unilever facility, with detailed personal knowledge of the Plaintiffs’ operational activities. During her deposition, Goodwin acknowledged that Lazer Spot knew that the trailers were “going on the rail” once they had been spotted on Unilever’s property for loading. Pl.’s Mem., Docket No. 75, Ex. 2 at 43. Goodwin denied, however, that Lazer Spot was ever informed that the trailers were headed for specific locations. Id. at 51. She also testified that Lazer Spot kept no records showing the trailers’ ultimate destinations. Id. at 43.

The parties agree that during their employment with Lazer Spot, the Plaintiffs regularly worked in excess of 40 hours per week. See Pl.’s Mem., Docket No. 75, Exhibits 4 and 6. In accordance with their employment contracts and the Lazer Spot employee handbook, however, they did not receive additional pay. Id. at 10.

## **II. Standard of Review**

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986); see also Felty v. Graves Humphreys Co., 818 F.3d 1126, 1128 (4<sup>th</sup> Cir. 1987) (recognizing that trial judges have an “affirmative obligation” to keep unsupported claims and defenses from advancing to trial). A material fact is one that may affect the outcome of the suit. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether there is a genuine issue of material fact, the Court views the facts, and all inferences to be drawn from them, in the light

most favorable to the nonmoving party. See Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4<sup>th</sup> Cir. 1987).

When both parties file motions for summary judgment, the Court applies the same standard of review. McCready v. Standard Ins. Co., 417 F. Supp.2d 684, 695 (D.Md. 2006), citing Taft Broad Co. v. United States, 929 F.2d 240, 248 (6<sup>th</sup> Cir. 1991). In ruling on cross-motions for summary judgment, the Court must consider each motion “separately on its own merits to determine whether either of the parties deserves judgment as a matter of law.” Rossignol v. Vorhaar, 316 F.3d 516, 523 (4<sup>th</sup> Cir. 2003).

In this case, the Defendants are entitled to summary judgment only if they can establish that each element of the Motor Carrier Act exemption is satisfied as a matter of law. By contrast, the Plaintiffs may obtain summary judgment simply by showing that the Defendants have failed to raise a genuine issue of fact with respect to any “element essential to [their] case, and on which [they] will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. With these principles in mind, we turn to the instant dispute.

### **III. Analysis**

The Fair Labor Standards Act provides that covered employees shall be compensated at time and a half for hours worked in excess of forty per week. 29 U.S.C. § 207(a)(1). Exempted from this requirement are employees “with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 31502 of Title 49 of the Motor Carrier Act.” 29 U.S.C. § 213(b)(1). “The Supreme Court has cautioned,” however, that “exemptions to the FLSA are to be narrowly construed against the employer[] seeking to assert them[,] and their application limited to those establishments plainly

and unmistakably within their terms and spirit.” Rogers v. Savings First Mortgage, LLC, 362 F.Supp.2d 624, 634; quoting Arnold v. Ben Kanowsky, Inc., 361 U.S. 388, 392 (1960); see also Pugh v. Lindsay, 206 F.2d 43, 46 (4<sup>th</sup> Cir. 1953).<sup>3</sup> Accordingly, the employer “bear[s] the burden of proving that a particular employee’s job falls within [] an exemption.” Darveau v. Detecton, 515 F.3d 334, 337 (4<sup>th</sup> Cir. 2008) (Internal quotation and citations omitted).

Whether an employee is exempt under § 13(b)(1) depends on both the class to which his employer belongs and on the type of work involved in the employee’s job. 29 C.F.R. § 782.2(a). According to the governing regulations, the Secretary of Transportation’s authority to establish qualifications and maximum hours of service extends only to those employees who (i) “are employed by carriers whose transportation of passengers or property is subject to his jurisdiction under Section 204 of the Motor Carrier Act”; and (ii) “engage in activities [] directly affecting the safety of operation of motor vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce[.]” Id. (citing cases).

In this case, the parties disagree as to nearly every aspect of whether these conditions are satisfied. Specifically, the Plaintiffs contend that the Secretary of Transportation lacks jurisdiction over Lazer Spot because: (i) the jockey vehicles used at the Unilever plant are not “commercial motor vehicles”; (ii) the jockey vehicles cannot legally be driven on a public highway; and (iii) Lazer Spot is not engaged in interstate commerce within the meaning of the Motor Carrier Act. With respect to the second requirement, the Plaintiffs argue (i) that they were not facilitating the movement of goods in interstate commerce; and (ii) that their “safety-

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<sup>3</sup> Because the Maryland Wage & Hour Law incorporates the exemptions set forth in the FLSA, our analysis of federal Motor Carrier Act exemption applies to the Plaintiffs’ state law claim as well. See Md. Code Ann., Labor & Employment Article, § 3-415.

affecting” activities were “so casual and insignificant as to be de minimis.” Pl.’s Mem., Docket No. 75, 36-38. We take up each of these arguments below.<sup>4</sup>

A. The Secretary’s Jurisdiction Over Lazer Spot:

i. *The Weight of the Jockey Vehicles*

In order for the Secretary to have jurisdiction over Lazer Spot, Lazer Spot must qualify as a “motor carrier,” i.e., a “person providing commercial motor vehicle transportation for compensation.” 49 U.S.C. § 13102(14). Pursuant to the current statutory framework, a “commercial motor vehicle” is “a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle ... has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater.” 49 U.S.C. § 31132(1). In this case, the Plaintiffs assert that each of Lazer Spot’s vehicles weighs less than 10,000 pounds. Accordingly, the Plaintiffs contend that the vehicles are not “commercial motor vehicles” for purposes of the Motor Carrier Act.

On the record before us, neither party has offered admissible evidence of the vehicles’ weight. As we have discussed, the Defendants have submitted manufacturers’ certificates of origin attesting that each of the vehicles weighs more than 14,000 pounds. Def.’s Mem., Docket No. 72, Ex. H. Although the certificates are hearsay, the Defendants contend that they are nevertheless admissible under Rule 803(6) of the Federal Rules of Evidence. See Def.’s Reply, 4-5. In support of this argument, the Defendants cite Harris v. State, 846 S.W.2d 960 (Tex. App. 1993), a case in which the Texas Court of Appeals ruled that a similar certificate was admissible

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<sup>4</sup> As we have discussed, the existence of a genuine issue of fact with respect to any of the above-mentioned requirements will entitle the Plaintiffs to summary judgment. For this reason, the Court must consider each of the Plaintiffs’ arguments in order to resolve this dispute.

as a business record.<sup>5</sup> What distinguishes Harris from this case, however, is that the proponent of the evidence in Harris authenticated the certificate in accordance with Rule 803(6), which requires that a proper foundation be laid for a document to be admissible as a business record. Id. at 964 (“The State asked Sorenson a series of questions to comply with the hearsay rule, and then offered the record.”) In this case, by contrast, the Defendants have failed to authenticate the certificates. In order to comply with the business records exception, the Defendants were required, at a minimum, to submit “a written declaration of [the certificates’] custodian or other qualified person,” attesting that the certificates were, inter alia, kept in the regular course of business and by a person with knowledge of the matter in question. See Fed.R.Evid. 902(11). Having failed to comply with this requirement, the Defendants are precluded from relying on the certificates in support of their motion for summary judgment. See, e.g., Orsi v. Kirkwood, 999 F.2d 86, 92 (4<sup>th</sup> Cir. 1993) (“It is well established that unsworn, unauthenticated documents may not be considered on a motion for summary judgment.”)<sup>6</sup>

As for the Plaintiffs, they too offer no admissible evidence that the vehicles weighed less than 10,000 pounds. Although they rely on Meyers’s affidavit, Myers’s “belief” that the vehicles weighed less than 10,000 pounds is unsupported by personal knowledge. Accordingly, the affidavit is inadmissible for purposes of summary judgment. See, e.g., Catawba Indian Tribe of

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<sup>5</sup> Although Harris was decided under the Texas Rules of Evidence, the Court nevertheless acknowledged that “the Texas Rules of Evidence are patterned after the Federal Rules of Evidence,” and accordingly looked to the Federal Rules and case law for guidance. 846 S.W.2d at 964.

<sup>6</sup> As the Fourth Circuit noted in Orsi, “we have no desire to make technical minefields of summary judgment proceedings, but neither can we countenance laxness in the proper and timely presentation of proof.” Id.

South Carolina v. State of S.C., 978 F.2d 1334 (4<sup>th</sup> Cir. 1992), quoting Antonio v. Barnes, 464 F.2d 584 585 (4<sup>th</sup> Cir. 1972) (“The absence of an affirmative showing of personal knowledge of specific facts vitiates the sufficiency of the affidavits and, accordingly, summary judgment based thereon is improper.”)

Limiting its inquiry to the admissible evidence in the record, the Court is unable to determine whether any of Lazer Spot’s vehicles weighs more than 10,000 pounds. As a result, there is a genuine issue of fact as to whether the vehicles are “commercial motor vehicles,” and, therefore, whether Lazer Spot is a “motor carrier” subject to the jurisdiction of the Secretary of Transportation. Accordingly, the Defendants are unable to establish that are covered by the Motor Carrier Act exemption. At the same time, the Plaintiffs have yet to demonstrate that the exemption does not apply.

ii. *The Legal Status of the Vehicles*

The Plaintiffs next contend that the jockey vehicles are outside the purview of the Motor Carrier Act because they cannot legally be driven on a public highway. In support of this assertion, the Plaintiffs point out that the vehicles have no license plates, were designed for “off road” use, and cannot travel more than 20 miles per hour. Pl.’s Mem., Docket No. 75, at 27. None of these circumstances, however, deprives the Secretary of Transportation of jurisdiction over Lazer Spot.

As we have discussed, the statutory definition of “commercial motor vehicle” requires only that a vehicle weigh more than 10,000 pounds and be driven on a public highway to transport property or passengers in interstate or foreign commerce. 49 U.S.C. § 31132(1). No further requirements are imposed. Notwithstanding their arguments to the contrary, the

Defendants have cited no authority suggesting that the design or speed of a vehicle is in any way relevant to Secretary of Transportation's authority. Moreover, insofar as the vehicles do not have license plates, Lazer Spot's failure to comply with state or local registration laws does nothing to exempt it from the Secretary's jurisdiction. For these reasons, the Plaintiffs have failed to show that the vehicles are outside the scope of the Motor Carrier Act exemption.

iii. *The Interstate Commerce Requirement*

In order for the Secretary of Transportation to have jurisdiction over Lazer Spot, Lazer Spot must be engaged in the transportation of passengers or property "between a place in (A) a State and a place in another State; [or] (B) a State and another place in the same state through another State." 49 U.S.C. § 13501. Seizing on this language, the Plaintiffs contend that the Secretary lacks jurisdiction over Lazer Spot because "the jockeys never transported passengers or property by motor carrier between a place in Maryland and a place in another state." Pl.'s Mem., Docket No. 75, at 22. As the following analysis makes clear, that Plaintiffs' narrow reading of § 13501 has consistently been rejected.

In Bilyou v. Dutchess Beer Distributors, Inc., the Second Circuit recognized that "[e]ven if a carrier's transportation does not cross state lines, the interstate commerce requirement is satisfied if the goods being transported within the borders of one state are involved in a practical continuity of movement in the flow of interstate commerce." 300 F.3d 217, 223 (2<sup>nd</sup> Cir. 2002); quoting Walling v. Jacksonville Paper Co., 317 U.S. 564, 568 (1943); see also Foxworthy v. Hiland Dairy Co., 997 F.2d 670, 672 (10<sup>th</sup> Cir. 1993); Reich v. American Driver Serv., Inc., 33 D.3d 1153, 1155, n. 3 (9<sup>th</sup> Cir. 1994); 29 C.F.R. § 782.7(b)(1). Accordingly, whether the transportation is interstate or intrastate "is determined by the essential character of the

commerce, manifested by the shipper's fixed and persisting intent at the time of the shipment." See, e.g., Klitzke v. Steiner Corp., 110 F.3d 1465, 1469 (9<sup>th</sup> Cir. 1997); Foxworthy, 997 F.2d at 662. In determining whether Lazer Spot is engaged in interstate commerce, the Court will apply this established standard in lieu of the Plaintiffs' literal interpretation of § 13501.

The question in this case, then, is this: when Lazer Spot left trailers on Unilever's property for loading, did Unilever have a fixed and persisting intent to ship the trailers to a specific out-of-state location? See, e.g., Project Hope v. M/V Ibn Sina, 250 F.3d 67, 74 (2<sup>nd</sup> Cir. 2001) (Whether transportation is of an interstate nature is determined by reference to its "intended final destination.") As we have discussed, the parties offer conflicting evidence on this point. At his deposition, Lazer Spot President Wes Newsome testified that Unilever told Lazer Spot that the trailers were destined for specific locations.<sup>7</sup> Def.'s Mem., Docket No. 72, Ex. D, at 99. In contrast to Newsome's testimony, Marilyn Goodwin, a former site manager at the Unilever facility, testified that although Lazer Spot knew that the trailers were "going on the rail," they were never informed where particular trailers were headed. Pl.'s Mem., Docket No. 75, Ex. 2, at 51. On the record before us, these conflicting statements raise a genuine issue of fact concerning Lazer Spot's engagement in interstate commerce.<sup>8</sup> Accordingly, the Plaintiffs

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<sup>7</sup> In an exhibit to Newsome's deposition, Lazer Spot offers documents purporting to be lists distributed to jockeys at the Unilever plant. Def.'s Mem., Ex. D, Dep. Exhibits 7 & 8. According to Newsome, the lists inform the jockeys which trailers can be loaded to certain parts of the country. Id. at 99. Assuming, arguendo, that the documents are properly authenticated, they are in any event contradicted by Goodwin's deposition testimony. Accordingly, even if the documents are admissible, they do not change our conclusion that a jury question exists with respect to Lazer Spot's engagement in interstate commerce.

<sup>8</sup> As we have mentioned, the proper point of reference is whether Unilever had a fixed and persisting intent to ship the trailers to a particular out-of-state location. Curiously, however, neither party has offered direct evidence on this question, either by way of deposition or

have again failed to show that Lazer Spot ineligible for the Motor Carrier Act exemption. For the same reason, the Defendants are unable to establish that they are entitled to summary judgment.

B. The Plaintiffs' Employment Activities:

Just as the Plaintiffs have failed to show that the Secretary of Transportation lacks jurisdiction over Lazer Spot, they are similarly unable to establish that their employment activities are beyond the scope of the Motor Carrier Act exemption.

As an initial matter, the Plaintiffs deny that they were facilitating the movement of goods in interstate commerce. Here again, however, the analysis depends on Unilever's fixed and persisting intent at the time the Plaintiffs left trailers on its property for loading.<sup>9</sup> As discussed above, the evidence on this question points in different directions, raising a genuine issue of fact which must be resolved by a jury at trial.

The Plaintiffs' final argument is that their safety-affecting activities were so trivial as to fall within the "de minimis" exception to the Motor Carrier Act exemption. In support of this argument, the Plaintiffs emphasize that except for the occasions when they traveled 1/8th of a mile down Holabird Ave. to the overflow lot, their transportation of trailers took place entirely on Unilever's private property. In response to this argument, the Defendants maintain that

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otherwise. Accordingly, the only evidence of Unilever's intent in this case is what Lazer Spot knew at the time it was spotting trailers on Unilever's property for loading.

<sup>9</sup> As the Department of Labor has recognized, the "spotting" of trucks and trailers is a part of interstate commerce where (i) the transportation takes place over the public highways, and (ii) the transportation "is either the beginning or continuation of an interstate or foreign journey." See Wage & Hour Division, Field Operations Handbook, § 24b00; Docket No. 72, Ex. J. In this case, there is no dispute that the plaintiffs traveled "over the public highways" to transport trailers and pallets from the overflow lot to Unilever's main facility. Accordingly, our analysis depends on whether, at the time the Plaintiffs transported the trailers, the trailers had begun on their journey in interstate or foreign commerce.

irrespective of the distance between the overflow lot and Unilever's main facility, the "Plaintiffs spent many hours each day driving vehicles that weighed more than seven tons over a road used by other members of the public." Def.'s Reply, Docket No. 76, at 15.

As the Court has noted, the parties disagree as to how often the Plaintiffs were required to drive on Holabird Ave. Although the Defendants claim that such trips took place "each and every day, and many times a day," Def.'s Mem, Docket No. 72, at 8 the Plaintiffs object - correctly - that this assertion is without support in the record. Pl.'s Reply, Docket No. 79, at 14. Absent such support, there is a genuine issue of fact as to whether the "de minimis" exception applies. Accordingly, the Plaintiffs have failed to show that they are outside the scope of the Motor Carrier Act exemption.

#### **IV. Conclusion**

As the foregoing analysis makes clear, the Defendants have failed to show that the Motor Carrier Act exemption is satisfied as a matter of law. At the same time, the Plaintiffs have not established that the Defendants are unable to meet their burden on any essential element of their claim. For these reasons, the Court will, by separate order, DENY the pending Motions for Summary Judgment.

It is so ORDERED this 25<sup>th</sup> day of June, 2008.

/s/  
Benson Everett Legg  
Chief Judge