S234969

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOUGLAS TROESTER,

Plaintiff and Appellant,

v.

STARBUCKS CORPORATION,

Defendant and Respondent.

ON A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 14-55530

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STARBUCKS CORPORATION

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RESPONDENT'S ANSWER BRIEF ON THE MERITS

I. INTRODUCTION

California's *de minimis* rule applies to wage and hour claims under the California Labor Code for the following reasons. First, appellant Douglas Troester argues that this Court should not import a "federal" rule absent evidence of legislative intent. This argument fails because the *de minimis* rule is not a federal rule. Rather, it has been a backbone of California law for nearly 150 years and applied in a wide variety of contexts. There is no reason that this Court should not apply it to California wage claims too, as many courts have done.

Second, even if the *de minimis* rule was not already California law, this Court has long held that "[f]ederal decisions have frequently guided our interpretation of state labor provisions the language of which parallels that of federal statutes." (*Building Material & Const. Teamsters' Union, Local 216 v. Farrell* (1986) 41 Cal.3d 651, 658.) Troester argues this rule does not apply because state law somehow conflicts with federal decisions applying the *de minimis* rule. He argues there is a conflict because California requires employees to be paid for "all" hours worked, but his argument ignores the fact that the Fair Labor Standards Act imposes the same requirement. Thus, this Court may properly look to federal law—especially when the California Division of Labor Standards Enforcement has endorsed it for nearly three decades and the Legislature has ratified it by not changing it even though it has existed for so long.

Finally, Troester's position regarding "all" hours worked leads to absurdities. If an employee has to spend a few seconds leaving work after clocking out, then there is a labor law violation according to Troester. This means that there could be innumerable lawsuits over a few seconds of time. The *de minimis* rule is one of common sense and everyday practicality, which prevents such absurdities.

II. BACKGROUND

A. Troester Allegedly Worked Brief Moments "Off-The-Clock" On "Closing Shifts."

Troester worked in a Starbucks store in California from February 2008 until January 2011. (2 ER 38, 58, 61.) He initially worked as a "barista," an entry-level coffee-server, and then as a "shift supervisor." (2 ER 38, 61-62.)

Citing only a *summary* of the relevant facts, Troester argues that he performed tasks off-the-clock for "4 to 10 minutes on a daily basis." (AOB 6.) But that description does not accurately reflect what the undisputed evidence showed and the district court found. Rather, the amount "generally totaled *less than four minutes*" and only "rare[ly]" did it exceed that amount, in which case it still "nearly always was less than 10 minutes." (1 ER 5, emphasis added.)[1]

Troester contends that, as a shift supervisor, he performed unpaid work at the end of the business day, i.e., "closing" shifts. (2 ER 40, 82, 89.) According to Troester, at the end of a closing shift, he was responsible for using the store computer to transmit sales data to Starbucks headquarters—the "close store procedure." (2 ER 40, 87.) This procedure consisted only of selecting "close store" with the computer's mouse or keyboard, entering a password, and then pressing the "Y" key. (2 ER 40, 87-88.)

Troester contends that the computer system required that he clock out before initiating the close store procedure. (2 ER 41, 102-105.) He

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[1] Nor does the aggregate time—incurred over the course of nearly a year and a half—total 12 hours as Troester incorrectly estimates. (AOB 6.) Nearly 7 hours of this estimate is simply the result of Troester's attorney using incorrect figures or making typographical errors in his calculations. (5 ER 817-18, ¶¶ 3-10.) Another 2 hours of this estimate comes from Troester's attorney mistakenly considering the seconds in the alarm records but not in the punch records. (5 ER 818, ¶ 11.) The time at issue, therefore, totals just over 4 hours. (*Ibid.*)

claims that the close store procedure typically lasted "one minute to two minutes" before he activated the alarm. (2 ER 41, 113.) Immediately afterwards, Troester set the store alarm by typing a numeric code on the alarm panel near the computer. (2 ER 40, 84.) The alarm system required that employees leave the store within 60 seconds of setting the alarm. (2 ER 42, 85.) So, after activating the alarm, Troester immediately exited the store and locked the front door. (2 ER 42, 90, 93-94.) He estimates that it took 30 seconds to leave the store and as little as 15 seconds to lock the door. (2 ER 42, 92-94.) Troester claims that he then walked his co-workers to their cars, which took 35-45 seconds. (2 ER 42, 95.) This time—generally totaling less than four minutes—is the amount of off-the-clock time that Troester claims regularly occurred. (1 ER 5.) He wants to be paid for it. (2 ER 42, 99.)

Troester further claims that, on rare occasions, he performed additional tasks after clocking out and exiting the store. First, every "couple of months," he brought the store's patio furniture inside the store after he and the other employees forgot to do so while still on-the-clock. (ER 43, 99.) Second, every "couple of months," he opened the door so that another employee could retrieve a coat that he or she had left behind. (2 ER 43, 90-91, 101.) Third, two or three times a month, he stayed outside the store with a co-worker who was waiting for a ride. (*Ibid.*) Even when performing these rare additional tasks, the district court concluded that the total amount of time still "nearly always was less than 10 minutes." (1 ER 7.)

B. Troester Sues.

Troester sued on behalf of a putative class of Starbucks non-managerial employees in California who performed a "store closing procedure." (4 ER 743, ¶ 12.) He claims that Starbucks violated the California Labor Code by failing to pay minimum and overtime wages for

the alleged off-the-clock work. (4 ER 745, ¶¶ 20-43.) He also claims that, as a result of failing to pay for this time, Starbucks provided inaccurate wage statements (4 ER 748-49, ¶¶ 44-51), neglected to pay all wages due upon termination (4 ER 750-51, ¶¶ 52-62), and violated California's Unfair Competition Law (4 ER 751-52, ¶¶ 63-69). He also seeks injunctive relief. (4 ER 752.)

C. The District Court Grants Summary Judgment On All Of Troester's Claims.

Starbucks sought summary judgment on all of Troester's claims, arguing, *inter alia*, that any unpaid time was *de minimis* and thus not recoverable. (2 ER 23-26.)[2]

As the district court aptly put it, Troester claims that Starbucks "fail[ed] to pay him for the *brief* time he spent closing up the store after he clocked out," such as "the time he spent *walking out of the store* after activating the security alarm, [] the time he spent *turning the lock* on the store's front door, and [] the time he spent occasionally *reopening the door* so that a co-worker could retrieve a coat." (1 ER 1, emphasis added.)

Applying a *de minimis* test set forth in *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 692, and *Lindow v. U.S.* (9th Cir. 1984) 738 F.2d 1057, 1063, for wage claims brought under the Fair Labor Standards Act (FLSA), the district court concluded that the test equally

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[2] Starbucks also argued that the "closing" tasks that Troester performed only *rarely*—namely, occasionally allowing a co-worker to reenter the store to retrieve a coat, spending time with co-workers outside the store who were waiting for rides, and retrieving forgotten patio furniture—were not compensable "work" because Troester *chose* to perform them and/or Starbucks had no knowledge of them. (2 ER 26-30, 42-45, 90-91, 94-101.) For example, Troester admittedly waited with co-workers for rides not because his managers asked him to do it or knew about it, but because he felt he should. (2 ER 44, 96-98, 120, 127.) However, these and other alternative arguments raised are not at issue here. Nor did the district court reach them. (1 ER 7.)

applies to claims under the California Labor Code, and that these brief periods of time need not be paid. (1 ER 6 ["Through the de minimis defense, the law recognizes that '[s]plit-second absurdities are not justified by the actualities of working conditions.'"], quoting *Anderson, supra*, 328 U.S. at p. 692.)

In granting summary judgment for Starbucks, the district court applied the three factors courts consider in determining whether work time is *de minimis*: (1) the practical administrative difficulty of recording the time; (2) the aggregate amount of time; and (3) the regularity of the additional time. (1 ER 4, citing *Lindow, supra*, 738 F.2d at p. 1063.)

The district court first examined the second *Lindow* factor—the "aggregate amount of compensable time"—and cited with approval authority holding that "daily periods of approximately 10 minutes are de minimis." (1 ER 4, citations omitted.) The court analyzed "the undisputed facts" to determine how long it took Troester to perform each allegedly compensable task after clocking out: run the "close store" function and activate the alarm (about 1 minute)[3]; exit the store (30 seconds); lock the door (15 seconds to 2 minutes); and walk co-workers to their cars (45 seconds). (1 ER 5.) The court also found that other tasks—waiting with co-workers for rides, letting them back into the store, or bringing in patio furniture that Troester forgot to retrieve before clocking out— occurred on "rare" occasions and in any event took only "a few minutes." (*Ibid.*) The court concluded that, "[e]ven assuming that all of this time otherwise would be compensable 'work,' it generally totaled less than four minutes, and nearly always was less than 10 minutes." (*Ibid.* ["The duration of

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[3] The undisputed evidence showed that, on average, Troester activated the alarm approximately one minute after clocking out; that he did so within two minutes on 90% of his shifts, and within 5 minutes on every shift. (1 ER 5.)

Troester's post-closing activities is *even briefer* than the time periods found de minimis in [other cases]."], emphasis added.)

In considering the first factor, the court held that the "'administrative difficulty of recording the additional time' also favors applying the de minimis defense." (1 ER 5.) The court held that Starbucks timekeeping system "could not feasibly capture the time at issue in this case." (1 ER 6.) This was in part because the software Starbucks used allegedly required Troester to clock out before initiating the store closing procedure—a task "which lasted one minute on average." (*Ibid.*) Moreover, the court found that it would be "impracticable" for Starbucks to capture the tasks Troester performed after completing the store closing procedure. (*Ibid.*) For example, employees "could not set the alarm prior to clocking out because the alarm became activated within one minute and would be triggered if the employees did not immediately exit the store." (*Ibid.*) Moreover, employees must "necessarily" clock out before they walk out of the store, lock the front door, and walk co-workers to their cars—tasks that took "minimal time." (*Ibid.*)

As to the third factor, the court agreed with other authority that the *de minimis* rule can be applied "even when a plaintiff alleges uncompensated time every day" where the first two *Lindow* factors are satisfied. (1 ER 6.)

Accordingly, the court dismissed the claim for unpaid wages, as well as the derivative claims for failure to provide accurate wage statements, failure to timely pay all final wages, and unfair competition. (1 ER 7.) The district court concluded:

> The brief moments that Plaintiff spent in and around the store after clocking out are an inevitable and incidental part of closing up any store at the end of business hours. There will always be some unaccounted-for seconds spent on setting an alarm, physically leaving the store, locking the door, and

> walking out at the end of a closing shift. But not every second can be or need be recorded and compensated.

(1 ER 6.)

D. The Ninth Circuit Requests That This Court Decide Whether The *De Minimis* Rule Applies To California Wage And Hour Claims.

Troester appealed the summary judgment decision and the Ninth Circuit held oral argument. Afterward, the Ninth Circuit asked this Court to decide whether the *de minimis* rule, as stated in *Anderson* and *Lindow*, applies to claims for unpaid wages under the California Labor Code. This Court granted the Ninth Circuit's request.

III. ARGUMENT

The *de minimis* rule was first adopted in FLSA cases in *Anderson*:

> When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act. It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved.

(*Anderson, supra,* 328 U.S. at p. 692.)

Relying on *Anderson*, the courts developed a three factor test to "determin[e] whether otherwise compensable time is *de minimis*": "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work." (*Lindow, supra*, 738 F.2d at p. 1063; see also, e.g., *Carlsen v. U.S.* (Fed. Cir. 2008) 521 F.3d 1371, 1380-1381 [following *Lindow*]; *De Asencio v. Tyson Foods, Inc.* (3d Cir. 2007) 500 F.3d 361, 374-375 [same]; *Reich v. N.Y.C. Transit Auth.* (2d Cir. 1995) 45 F.3d 646, 652 [same].)

As *Lindow* observed, the "*de minimis* rule concerns 'just plain everyday practicality.'" (*Lindow, supra,* 738 F.3d at p. 1063, quoting

Veech & Moon, *De Minimis Non Curat Lex* (1947) 45 Mich.L.Rev. 537, 551.) While "[m]ost courts have found daily periods of approximately 10 minutes *de minimis,*" "[t]here is no precise amount of time that may be denied compensation as *de minimis*." (*Id.* at p. 1062.) "No rigid rule can be applied with mathematical certainty. Rather, common sense must be applied to the facts of each case." (*Ibid.*)

This common sense and practical approach, "justified by industrial realities," is also embodied in the Code of Federal Regulations. (29 C.F.R. § 785.47 ["[I]nsubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded."].)

The *Lindow* test "reflects a balance between requiring an employer to pay for activities it requires of its employees and the need to avoid 'split-second absurdities' that 'are not justified by the actuality of the working conditions.'" (*Rutti v. Lojack Corp.* (9th Cir. 2010) 596 F.3d 1046, 1057, quoting *Lindow, supra*, 738 F.2d at p. 1062.) As Judge Posner of the Seventh Circuit has stated, the rule is often applied when "the harm is small but measuring it for purposes of calculating a remedy would be difficult, time-consuming, and uncertain, hence not worthwhile given that smallness." (*Mitchell v. JCG Industries, Inc.* (7th Cir. 2014) 745 F.3d 837, 841.)

These common sense principles, as explained below, apply equally to wage claims under the California Labor Code.

A. The *De Minimis* Rule Has Long Been A Central Component Of California Law, So It Is Not A Federal Rule.

Troester argues that this Court should reject application of a "federal" *de minimis* rule, assuming the *de minimis* rule is a *federal* rule. It is not. It "is a maxim of ancient origins, 'old' even in the infancy of the

nation," and it even informs whether rights under both the United States and California Constitutions have been violated. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 514 [despite differences between the rights to freedom of speech under the First Amendment of the United States Constitution and under article I of the California Constitution, the *de minimis* rule applies to article I "as well"].)

The *de minimis* rule is "part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." (*Wisconsin Dept. of Revenue v. Wrigley Co.* (1992) 505 U.S. 214, 231 (*Wrigley*).) In *Wrigley*, the Supreme Court interpreted 15 U.S.C. § 381, which "confers immunity from state income taxes on any company whose 'only business activities' in that State consist of 'solicitation of orders' for interstate sales." (*Id.* at p. 223.) Relying on the word "only," Wisconsin argued that the "plain language" of Section 381 bars "recognition of a *de minimis* exception" and thus a company loses its tax immunity if it conducts *any* in-state activities that go beyond "solicitation." (*Id.* at p. 231.) The Court disagreed, finding that such an interpretation "ignores" the fundamental and "established" nature of the *de minimis* rule and would lead to absurd results. (*Ibid.* ["Wisconsin's reading of the statute renders a company liable for hundreds of thousands of dollars in taxes if one of its salesmen sells a 10-cent item in state."].)

The rule is grounded in the "venerable maxim *de minimis non curat lex* ('the law cares not for trifles')." (*Wrigley, supra*, 505 U.S. at p. 231.) This maxim has been codified in California law since at least the adoption

of the Civil Code in 1872. (Civ. Code, § 3533 ["The law disregards trifles."].)[4]

California courts have long applied this rule in a broad range of cases. (See, e.g., *People v. Armstrong* (2016) 1 Cal.5th 432, 452 [where juror "looked at a book and a cell phone 'one or two times' for 'a few minutes[,]' [s]uch de minimis references . . . do not support a determination that [she] was refusing to deliberate"]; *Claremont Police Officers Ass'n v. City of Claremont* (2006) 39 Cal.4th 623, 638-639 [city not required to confer with union before requiring officers to document race and ethnicity of persons subject to vehicle stops because it took officers only several minutes per shift to fill out the forms, and thus "the impact on the officers' working conditions was *de minimis*"]; *Connell v. Higgins* (1915) 170 Cal. 541, 556 [where contractor has substantially performed his contract, recovery of the price is not defeated by "trivial defects or imperfections in the work performed"]; *Wolf v. Prosser* (1887) 73 Cal. 219, 219-220 [where "property to be sold and the proceeds divided in a specified way" and the amount in dispute "amounted to only ten dollars[,] [w]e think this is a proper case for the application of the maxim, *De minimis [non curat lex]*"]; see also *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 79 ["Time and effort spent assembling materials for an application to modify a loan is the sort of nominal damage subject to the maxim de minimis non curat lex . . . ."]; *Bermudez v. Fulton Auto Depot, LLC* (2009) 179 Cal.App.4th 1318, 1325 [fact that auto dealer overcharged buyer by two dollars for vehicle license fees was a "trifle[]"]; *In re Marriage of Crook* (1992) 2 Cal.App.4th 1606, 1608-1609 & fn. 2 [in determining spousal share of a community property pension, "[w]e do not modify the

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[4] Troester argues that the Legislature specifically adopts a defense when it intends for a defense to apply. (AOB 16-17.) Section 3533 shows that it did so.

$2.38 per month discrepancy since it is de minimis"]; *Harris v. Time, Inc.* (1987) 191 Cal.App.3d 449, 458-460 [unfair advertising lawsuit "'de minimis' in the extreme" and "absurd waste of the resources of this court" where "plaintiffs' real complaint is that they were tricked into opening a piece of junk mail, *not* that they were misled into buying anything"], original emphasis; *Overholser v. Glynn* (1968) 267 Cal.App.2d 800, 810 [one additional month of prejudgment interest, while improper, was "de minimis and not sufficient ground for modifying the judgment"]; *Nye & Nisson v. Weed Lumber Co.* (1928) 92 Cal.App. 598, 607-608 ["To permit the cancellation of a contract for 750 cases of processed eggs merely because a minimum number thereof arrived at their destination unfit for use would violate the spirit of the legal maximum *de minimis non curat lex.*"].)

Thus, the *de minimis* rule is a fundamental part of California law—not an import from federal law. Troester completely ignores this.

B. The *De Minimis* Rule Applies To California Wage Claims.

1. Courts Have Regularly Applied The *De Minimis* Rule To California Wage Claims.

Given California's longstanding adoption of the *de minimis* rule, it is not surprising that many courts have applied the *de minimis* rule to wage and hour claims under California law. (*Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 527-528 [applying *Lindow* test to California wage claim]; accord *Corbin v. Time Warner Ent't-Advance/Newhouse P'ship* (9th Cir. 2016) 821 F.3d 1069, 1081-1082 & fn. 11; *Gillings v. Time Warner Cable LLC* (9th Cir. 2014) 583 F.App'x 712, 714; *Cervantez v. Celestica Corp.*, (C.D.Cal. 2009) 618 F.Supp.2d 1208, 1216-1217; *Alvarado v. Costco Wholesale Corp.* (N.D.Cal., June 18, 2008, No. C 06-04015 JSW) 2008 WL 2477393, at *3-4; *Cornn v. UPS, Inc.* (N.D.Cal., Aug. 26, 2005, No. C03-2001 TEH) 2005 WL 2072091, at *4.) This Court should do the same.

2. California Courts Regularly Look To Federal Guidance Where There Is No Conflict.

"Federal decisions have frequently guided our interpretation of state labor provisions the language of which parallels that of federal statutes." (*Building Material, supra*, 41 Cal.3d at p. 658 ["consider[ing] federal . . . precedents" to construe statutory obligation to bargain collectively under California law where that obligation was the same as under the National Labor Relations Act]; *See's Candy Shops, Inc. v. Superior Court* (2013) 210 Cal.App.4th 889, 903 ["In the absence of controlling or conflicting California law, California courts generally look to federal regulations under the FLSA for guidance."].)

This Court has looked to federal law in determining what "hours worked" means unless California law conflicts with it. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584-585 [relying on federal regulations and case law to interpret meaning of the phrase "suffered or permitted to work," as that phrase appears in both the FLSA and California definitions of "hours worked"]; *id.* at p. 593 [declining to follow federal guidance on the compensability of travel time because "federal and state law regarding travel time are *dissimilar*"], emphasis added.) Here, despite Troester's assertions to the contrary, there is no conflict between state and federal law, so this Court should look to federal law—*Anderson* and *Lindow*—for guidance on adopting and applying a *de minimis* rule.

Troester argues that the *de minimis* rule conflicts with the plain language of California law, which requires that "any" or "all" hours worked be compensated. (AOB 1-3, 13-16.) But his argument assumes that federal law differs in this regard. It does not. (*Bamonte v. City of Mesa* (9th Cir. 2010) 598 F.3d 1217, 1220 ["'It is axiomatic, under the FLSA, that employers must pay employees for *all* hours worked.'"], quoting *Alvarez v. IBP, Inc.* (9th Cir. 2003) 339 F.3d 894, 902, *aff'd on other grounds sub*

nom. IBP v. Alvarez (2005) 546 U.S. 21, emphasis added; 29 C.F.R. § 778.223 ["an employee must be compensated for *all* hours worked"], emphasis added; see also 29 U.S.C. § 207(b)(2) [employees subject to collective bargaining agreements must still "receive compensation for *all* hours guaranteed or worked"], emphasis added.)

The cases applying the *de minimis* rule similarly acknowledge that the FLSA requires payment for *all* hours worked. (*Anderson, supra*, 328 U.S. at pp. 690-691 [compensable time "includes *all* time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace . . . ."], emphasis added; *id.* at pp. 691-694 [finding minutes spent "walking" from time clocks to work areas and performing preliminary tasks to be compensable, but remanding case for determination of how much of the time may be "disregarded" under *de minimis* rule]; *Lindow, supra*, 738 F.2d at p. 1062 ["As a general rule, employees cannot recover for *otherwise compensable* time if it is *de minimis.*"], emphasis added.)

Because California law is the same as federal law in this respect, "federal precedents . . . furnish reliable authority in construing" what it means to pay for "all" of the "hours" worked by California employees. (*Building Material, supra*, 41 Cal.3d at p. 658.)

See's is instructive. The defendant argued that a federal standard should guide whether a California employer may "round" employee work times "for purposes of computing and paying wages . . . ." (*See's, supra,* 210 Cal.App.4th at p. 900.) Because "there [wa]s no California statute or case law specifically authorizing or prohibiting this practice," the court found that the "federal[] standard is the appropriate standard." (*Id.* at p. 901.)

Moreover, like here, the California Division of Labor Standards Enforcement (DLSE) endorsed the standard (discussed in § III.B.3, below),

the Legislature never acted by amendment or otherwise to indicate that the DLSE's position was incorrect, and there was "no conflicting California law" such that resorting to federal guidance would be improper. (*See's*, *supra*, 210 Cal.App.4th at pp. 902-903, 905.) The court reasoned that time-rounding, like the *de minimis* rule, is grounded in practicality and efficiency, designed to compensate employee hours as precisely as possible without imposing an undue burden on employers, even if that means not every employee will ultimately be paid for every single minute that she works. (*Id.* at pp. 903, 908 & fn. 7 [it is "questionable" whether employees who "had a net loss of a *minimal amount* . . . would be entitled to a recovery for these wages . . . ."], emphasis added.)

See's also rejected an argument like Troester makes, namely, that rounding employee work times somehow conflicted with the statutory obligation to pay "'*[a]ll* wages'" or pay overtime for "*[a]ny work* in excess of eight hours in one workday . . . ." (*See's, supra,* 210 Cal.App.4th at pp. 904-905, citing Lab. Code, §§ 204, 510, original emphasis); compare AOB 1-4, 13-16, 18-20 [arguing that the *de minimis* rule conflicts with the plain language of Sections 204 and 510, *inter alia*, which require that "any" and "all" hours be compensated].)

However, Sections 204 and 510 "h[ave] nothing to do with" how an employer may "measure[]" or "calculat[e]" worktime. (*See's, supra*, 210 Cal.App.4th at p. 905.) Rather, for example, Section 510 simply "sets the multiplier for the rate at which 'Any' overtime work must be paid." (*Ibid.* ["Fundamentally, the question whether *all* wages have been paid is different from the issue of how an employer calculates the number of hours worked and thus *what wages are owed.*"], original emphasis.)

Troester's cited authorities are distinguishable. As stated above, *Morillion* declined to import federal standards on the compensability of compulsory travel time because they *conflicted* with the plain language of

the California Wage Orders. (*Morillion, supra*, 22 Cal.4th at pp. 589-590, 594 ["[W]e conclude that the relevant portions of the FLSA and Portal-to-Portal Act *differ substantially* from Wage Order No. 14-80 and related state authority. Therefore, Royal's reliance on federal authority, and the Court of Appeal's deference to it, are not persuasive."], emphasis added.)

Troester's reliance on *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, and *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, is misplaced for the same reason. In *Ramirez*, this Court found that "where the language or intent of state and federal labor laws *substantially differ*, reliance on federal regulations or interpretations to construe state regulations is misplaced." (*Ramirez, supra*, 20 Cal.4th at p. 797, emphasis added; *id.* at pp. 793, 797 [noting "fundamental conflict" between California definition of outside salesperson, which focuses on "how much work time is spent selling," and federal definition, which does not].) And in *Armenta*, defendant's reliance on the federal minimum wage standard was improper because it "contravenes" the California Labor Code. (*Armenta, supra*, 135 Cal.App.4th at p. 323.)

Here, no such conflict or difference—much less a "substantial" difference—exists because *both* federal law and state law require compensation for "all" "hours" worked. Thus, this Court may properly look to federal guidance in determining what those two words reasonably mean. (*Building Material, supra*, 41 Cal.3d at p. 658; see also *Ramirez, supra*, 20 Cal.4th at p. 795 [California law only "sometimes" departs from federal law or "provide[s] greater protection than is provided under the [FLSA]"]; *Gillings, supra*, 583 F.App'x at p. 714 [rejecting argument that

Morillion, or fact that California generally provides "greater protection to employees" than the FLSA, precludes application of the *de minimis* rule].)[5]

Mendiola v. CPS Security Solutions, Inc. (2015) 60 Cal.4th 833, is distinguishable as well. In *Mendiola*, the Industrial Welfare Commission (IWC) expressly incorporated federal standards in *some* wage orders *but not* in Wage Order 4, thus "seriously undermin[ing] the notion that the IWC intended to incorporate" them in Wage Order 4. (*Id.* at pp. 843, 847.) Here, the *de minimis* rule is not mentioned in *any* of the wage orders—not surprisingly given its fundamental nature—so *Mendiola* is not applicable.

Citing *Martinez v. Combs* (2010) 49 Cal.4th 35, Troester next argues that the timing of the IWC's enactment of its definition of "hours worked" shows that the Legislature intended to reject the *de minimis* rule. (AOB 21, 24-25 [noting that the IWC enacted the definition one year after *Anderson*].) But that is not why the IWC acted. Rather, the IWC enacted its definition of "hours worked" in response to the federal Portal-to-Portal Act, which amended the FLSA to exclude certain travel time and other activities from "compensa[ble]" time. (*Martinez, supra*, 49 Cal.4th at pp. 59-60.) Again, the *de minimis* rule is not concerned with whether the time is *compensable*. Rather, the *de minimis* rule is concerned with whether short periods of compensable time must be paid.

Troester also cites *Pacific Intermountain Express v. Nat'l Union Fire Ins. Co.* (1984) 151 Cal.App.3d 777, to support his "timing" argument,

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[5] In arguing that California wage and hour laws are sometimes more favorable to employees than federal law, Troester also notes that California law has a "strong policy" of construing wage and hour laws "liberally" to protect employees. (AOB 25-26.) But so does the FLSA. (*Tony & Susan Alamo Found. v. Sec'y of Labor* (1985) 471 U.S. 290, 296 [FLSA "construed . . . 'liberally to apply to the furthest reaches consistent with congressional direction' . . . ."]; *A.H. Phillips, Inc. v. Walling* (1945) 324 U.S. 490, 493 [exemptions from wage and hour protections "must . . . be narrowly construed"].)

but that case proves the opposite. As Troester correctly notes (AOB 24), the IWC "is presumed 'to have knowledge of existing judicial decisions and to have enacted statutes in light thereof.'" (*Pacific Intermountain, supra*, 151 Cal.App.3d at p. 783, citation omitted.) If the IWC did not intend its "analogous" language to be interpreted in the same way as *Anderson* interpreted the FLSA to include a *de minimis* rule, "it could have expressly declared such intent." (*Ibid.*) The IWC did not do so. In any case, "timing . . . is, at best, ambiguous evidence of legislative intent; it certainly does not constitute *clear* evidence of intent . . . ." (*Id.* at p. 785, original emphasis.)

Martinez is distinguishable for other reasons. In *Martinez*, the defendants argued that the wage orders "incorporated the federal 'economic reality' definition of employment . . . ." (*Supra,* 49 Cal.4th at p. 52.) Rejecting this argument, this Court reasoned that the wage order definition of "employ" was "[i]n no sense . . . based on federal law" because the IWC enacted it long before the economic reality test even existed, and that test had "uniquely federal antecedents." (*Id.* at pp. 66-67 [economic reality test grounded in "federal tax and social security laws"].) Here, as stated above, the *de minimis* rule is a long-standing and basic principle that "all enactments (absent contrary indication) are deemed to accept." (*Wrigley, supra*, 505 U.S. at pp. 231.) Nor is it "uniquely federal," as demonstrated by the Legislature's decision to codify it nearly 150 years ago. (Civ. Code, § 3533.)[6]

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[6] Troester's remaining arguments as to why California law somehow conflicts with federal law, or that the IWC intended to reject the *de minimis* rule, are equally unavailing. Troester argues that the Legislature's decision to criminalize the failure to pay wages shows an intent to reject the *de minimis* rule. (AOB 3, 18-19, 26.) But that is not why the Legislature acted. Rather, the Legislature criminalized the failure in a "further" effort "[t]o ensure the IWC's wage orders would be obeyed . . . ." (*Martinez,*

Thus, none of Troester's citations demonstrates that this Court should not look to federal law here.

3. The DLSE Has Long Endorsed The *De Minimis* Rule, Which The Legislature Has Ratified.

While California courts do not defer to the DLSE, its interpretations of California labor laws are persuasive. (*Augustus v. ABM Security Serv., Inc.* (Dec. 22, 2016, S224853) ___ Cal.5th ___ [2016 WL 7407328, at *2] [in construing "Labor Code and wage orders," "we . . . take account of interpretations articulated by the [DLSE], the state agency that enforces wage orders, for guidance."].) As this Court recently explained:

> As the state agency empowered to enforce wage orders and state labor statutes, the DLSE is in a position to accumulate both knowledge and experience relevant to the administration of wage orders. While its opinion letters are not controlling, they reflect the type of experience and considered judgment that may properly inform our judgment.

(*Id.* at *6-7, citations omitted; see also *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029, fn. 11 ["The DLSE's opinion letters, 'while not controlling . . . do constitute a body of experience and informed judgment to which courts . . . may properly resort for guidance.'"], citation omitted.)

Thus, it is significant that the DLSE has applied the *de minimis* rule for nearly three decades, consistent with its practice of consulting persuasive federal principles where they are "not inconsistent with state law." (DLSE Op. Letter 2010.04.07 at p. 3; see also DLSE Op. Letter 1988.05.16 at pp. 1-2 [adopting *Lindow* test and recognizing that *de minimis* "determinations will have to be made on a case-by-case basis"]; DLSE Manual (2002) §§ 46.6.4, 47.2.1-47.2.1.1, 48.1.9-48.1.9.1.)

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supra, 49 Cal.4th at pp. 53, 56.) Nor is it of any consequence that California requires employers to "keep records of hours worked" (AOB 4, fn. 3, 20), because the FLSA also does. (29 U.S.C. § 211(c) [employers must maintain records "of the wages, hours, and other conditions and practices of employment"].)

The Legislature's decision not to reject this interpretation, despite the DLSE's longstanding practice, is strong evidence that it agrees with the DLSE. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13 ["evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing,'" is a factor "suggesting the agency's interpretation is likely to be correct"]; *Moore v. Cal. State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1017-1018 ["[A] presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be presumed to know of it."].)[7]

Troester baldly asserts that the DLSE's interpretation conflicts with state law simply because the DLSE Manual cites federal guidance. (AOB 9.) But this assumes that federal law is inconsistent with state law and, as explained above, it is not. And while Troester correctly notes that the DLSE *manual* itself is not entitled to the "deference" that would be given to a statute or properly enacted regulation (AOB 33-34), the manual as well as the DLSE's advice letters still have persuasive value. (*Morillion, supra*, 22 Cal.4th at pp. 581, 584 [finding DLSE opinion letters "persuasive" regarding the meaning of "hours worked"]; *See's, supra*, 210 Cal.App.4th at pp. 902-903 [while "[s]tatements in the DLSE Manual are not binding . . . because the rules were not adopted under the Administrative Procedure Act [APA]," those statements still "may be considered for their persuasive value."].)

Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, cited by Troester, does not require a different result. *Tidewater* only ruled

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[7] Troester argues that a DLSE position that "flatly contradicts" one of its prior positions should be given little weight (AOB 10), but he offers no evidence this has happened.

that an enforcement policy in the DLSE Manual comprised a "regulation" and thus was void for failure to comply with the APA. (*Id.* at p. 576.) This Court did not hold that DLSE guidance is entitled to no consideration. (*Id.* at p. 571 [although not binding, DLSE "advice letters" and "interpretations that arise in the course of case-specific adjudication are not regulations[] . . . [and] may be *persuasive* as precedents in similar subsequent cases."], emphasis added.) Nor does *Tidewater* preclude this Court from agreeing with the DLSE's endorsement of the *de minimis* rule. (*Id.* at pp. 576-577 ["while we do not defer to the DLSE's interpretation of the IWC wage orders, we do not necessarily reject its decision to apply the wage orders to [the employees at issue]"].)

For all these reasons, the DLSE's position, and the Legislature's ratification of it, further support the conclusion that the *de minimis* rule applies to wage claims under the California Labor Code.

4. The *De Minimis* Rule Applies To Statutory Wage Claims, Not Just Equitable Claims.

Citing *Ghory v. Al-Lahham* (1989) 209 Cal.App.3d 1487, Troester argues that an equitable maxim such as the *de minimis* rule cannot be used to "nullify" or "avoid a statutory mandate." (AOB 31.) *Ghory* is distinguishable. In *Ghory*, the employer paid only a flat monthly salary to the plaintiff and failed to pay him for any overtime at all—even though he worked 59 hours per week. (*Ghory, supra,* 209 Cal.App.3d at pp. 1489-1492.) The court rejected the employer's equitable argument that paying overtime would result in "unjust enrichment" because the employee "agreed" to work this many hours. (*Id.* at p. 1492 ["Principles of equity cannot be used to avoid [the Section 1194] statutory mandate," which provides that employees are entitled to "the legal overtime compensation applicable to such employee . . . *notwithstanding any agreement to work for a lesser wage*."], original emphasis.)

In contrast, the *de minimis* rule is not about avoiding payment for hours worked altogether, or agreeing to a compensation arrangement that a statute expressly prohibits. Rather, it is about how precisely "all" "hours" can practicably be recorded and paid without there being "[s]plit-second absurdities." (*Anderson, supra*, 328 U.S. at p. 692.)

Nor can applying the *Lindow* test to wage claims be fairly compared with this Court's reluctance to apply the *de minimis* rule to certain tax sale, contract, or workers' compensation claims. (AOB 31-32.) In *Knoke v. Swan* (1935) 2 Cal.2d 630, this Court observed that only its prior decisions precluded application of the *de minimis* rule to tax sales, and noted "[w]ere this point newly presented, we should hesitate to declare void a title founded on proceedings where the error was so small." (*Id.* at p. 631 [sale invalid because property sold for "two cents less" than tax amount due].) Further, *Knoke* does not indicate whether it would have been administratively difficult to pay or determine the additional "two cents" needed to effect a valid sale. (*Ibid.*)

Gallamore v. Workers' Comp. Appeals Bd. (1979) 23 Cal.3d 815, and *Kenyon v. Western Union Tel. Co.* (1893) 100 Cal. 454, are distinguishable as well. In *Gallamore*, where the statute already limited the penalty for a violation to "unreasonabl[e]" delays in paying workers' compensation benefits, the board had no "discretion to ignore minor, de minimis delinquencies" not simply because "the statute does not recognize any such exception," but also because such delinquencies "*may be met by the board in determining reasonableness of the delay.*" (*Gallamore, supra*, 23 Cal.3d at pp. 822-823, original emphasis.) And in *Kenyon*, the Court held only that because "nominal damages" are available in contract cases, "the maxim *de minimis non curat lex*" generally does not apply. (*Kenyon, supra,* 100 Cal. at p. 458.)

Finally, Troester's argument that *Gomez* supports the proposition that the *de minimis* rule should only be applied to equitable claims, and not statutory claims (AOB 32), is misplaced. *Gomez* neither held nor even suggested any such thing. Rather, the court in *Gomez* had no occasion to address the rule in the context of the statutory claims because the plaintiffs alleged entitlement to pay for certain short periods of time *only* in the context of their claim for promissory estoppel. (*Gomez, supra*, 173 Cal.App.4th at p. 527.) In fact, *Corbin* relied on *Gomez* in finding that the *de minimis* rule *does* apply to statutory claims. (*Corbin, supra*, 821 F.3d at pp. 1075, fn. 3, 1079-1082 & fn. 11 [applying *de minimis* rule to wage claims under California Labor Code]; see also *See's, supra*, 210 Cal.App.4th at p. 901 [applying federal rounding standard to claims under California Labor Code].)[8]

In short, here there is no reason to depart from the basic principle that "all enactments" should be considered in light of the *de minimis* rule. (*Wrigley, supra*, 505 U.S. at p. 231.)

5. The *De Minimis* Rule Is No Less Relevant Today.

Troester argues that the *de minimis* rule is "obsolete" and no longer justified in the modern "era of electronic timekeeping," where Starbucks can record time "to the minute." (AOB 2, 30.) This also misses the mark. Advances in technology go to *merits* of the defense (i.e., administrative difficulty factor), not whether the defense exists.

Again, the *de minimis* rule concerns "the practical administrative difficulty of recording small amounts of time for payroll purposes."

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[8] If anything, *Gomez* demonstrates the protective nature of the *de minimis* rule. (*Gomez, supra,* 173 Cal.App.4th at p. 527-528 [finding *de minimis* rule could not be used to avoid payment not only because the time at issue "exceed[ed] a *de minimis* amount," but also because the "record contain[ed] no evidence regarding whether it would be difficult administratively to record the time plaintiffs spent" on the telephone].)

(*Lindow, supra*, 738 F.2d at pp. 1062-1063 ["just plain everyday practicality"]; see also *Anderson*, 328 U.S. at p. 692 ["a few seconds or minutes" that cannot be practically recorded "in light of the realities of the industrial world"].) These realities did not disappear because computers exist. The compelling facts here illustrate this.

The district court found in part that it was the *nature* of the activities—not the mechanics of Starbucks timekeeping system—that required Troester to spend minimal time performing work off-the-clock. (1 ER 6 ["The brief moments that Plaintiff spent in and around the store after clocking out are an inevitable and incidental part of closing up any store at the end of business hours."].) For example, Troester could not clock out *after* he spent seconds "walking" several feet to the front door and "turning" the lock behind him as he exited. (1 ER 1, 6.) Nor was it practical to clock out after setting the alarm because, once the alarm is set, he had to immediately exit and lock the store within 60 seconds or the alarm will sound. (*Ibid.*; see also *See's, supra*, 210 Cal.App.4th at p. 892 [time rounding practice permissible even though employer used modern "timekeeping software system" able to capture time "to the minute"].) Plus, even if it were feasible for Starbucks to capture the time spent performing the store closing tasks, the time at issue is miniscule, almost always totaling one to two minutes. (2 ER 41, 113.)

To find otherwise would lead to absurd results—attempting to track the one or two minutes Troester spent leaving the store. Moreover, Troester does not simply seek payment for the few minutes of time he spent leaving the store. He also seeks potentially thousands of dollars in wage statement penalties and waiting-time penalties for failing to pay him for these brief moments. (4 ER 748-751.) To credit such "[s]plit-second absurdities" (*Anderson, supra*, 328 U.S. at p. 692) cannot possibly be what the Legislature intended. (*Wrigley, supra*, 505 U.S. at p. 231 ["Wisconsin's

reading of the statute renders a company liable for hundreds of thousands of dollars in taxes if one of its salesmen sells a 10-cent item in state."]; *Ramirez, supra*, 20 Cal.4th at p. 801 ["no need to interpret the wage order so strictly" such that it "lead[s] to an absurd result"]; see also *People v. Mendoza* (2000) 23 Cal.4th 896, 908 ["We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend."]; Civ. Code, § 3533 ["The law disregards trifles."], § 3542 ["Interpretation must be reasonable."].)

Finally, the U.S. Supreme Court in *Sandifer v. U.S. Steel Corp.* (2014) 134 S.Ct. 870, did not cast doubt on the *Lindow* test's "continuing viability," as Troester argues. (AOB 30-31.) Rather, *Sandifer* simply found that a different rule should be applied in a unique situation where the statute itself *already concerned trifles*. (*Sandifer, supra,* 134 S.Ct. at pp. 880-881.) Specifically, *Sandifer* interpreted the meaning of "clothes" under Section 203(o) of the FLSA, which permits parties to a collective bargaining agreement to decide whether "the relatively insignificant periods of time" employees spend donning and doffing work clothes should be compensated. (*Id.* at pp. 876, 880.)

In that case, the parties' agreement provided that the time spent changing work clothes would not be compensated. (*Sandifer, supra*, 134 S.Ct. at 874 & fn. 3.) But, while the majority of this "insignificant" time was spent changing clothes such as work jackets and pants, a few items did not comprise "clothes" and thus were compensable—e.g., safety glasses and earplugs. (*Id.* at pp. 879-881.) Instead of "invoking" the *de minimis* rule to determine whether the compensable activities nonetheless need not be paid, the Court fashioned a specific test for Section 203(o): If the "vast majority" of the time is spent changing "clothes," then none of the time need be compensated even though some small portion of it is spent putting on non-clothes items such as glasses or earplugs. (*Id.* at pp. 880-881.)

Conversely, if the vast majority is spent changing non-clothes items, then all of the time must be compensated. (*Id.* at p. 881.)

The Court did not suggest that the *de minimis* rule should no longer be applied to statutes *other* than Section 203(o) and, in fact, made clear that the Section 203(o) scenario differed from that to which the *de minimis* rule would apply. (*Sandifer, supra*, 134 S.Ct. at p. 880 [unlike the statute at issue in *Anderson*, in which the *de minimis* rule applied, "the statute at issue here . . . is *all about* trifles"], original emphasis.)[9]

6. The *De Minimis* Rule Will Not "Injure" Employees.

Troester speculates that employees throughout California risk losing "billions" of wages per year if, for example, daily periods of two minutes are *de minimis*. AOB 28-29. But speculation is not evidence. (*People v. Waidla* (2000) 22 Cal.4th 690, 736; see also Evid. Code, § 702; *Sandifer, supra*, 134 S.Ct. at p. 878 ["[P]etitioner's fanciful hypotheticals give us little pause."].) There is no evidence about how many California employees are not being paid for *de minimis* time.

Further, Troester's argument assumes that two minutes of time would be *de minimis* in every single case. This ignores the protections set forth in *Lindow*, which states that *all* factors must be considered, and there can be "no rigid rule" on "the precise amount of time" that should be considered *de minimis*; rather, "common sense must be applied to the facts of *each case*." (*Lindow, supra*, 738 F.2d at p. 1062, emphasis added; *Gillings, supra*, 583 F.App'x at p. 715 [fact that complained of periods are

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[9] Nor did *Sandifer* suggest that that it is now "unclear what the federal *de minimis* test even is." (AOB 30-31.) *Sandifer* merely acknowledged that the *de minimis* regulation prohibits employers from "arbitrarily" refusing to pay work time, "however small" that time might be. (*Sandifer, supra,* 134 S.Ct. at p. 880, fn. 8, quoting 29 C.F.R. § 785.47.) The *Lindow* test is no less strict, and similarly requires that the administrative difficulty of recording the time and other factors be considered. (*Lindow, supra,* 738 F.2d at p. 1063.)

"very short" does not alone "justify application of the *de minimis* doctrine" because a court must consider other factors].)

Indeed, courts have declined to find the time *de minimis* where it is practical to record the time, even if it is small. (E.g., *Rutti, supra*, 596 F.3d at p. 1059; *Gillings, supra*, 583 F.App'x at p. 715 [reversing summary judgment for employer because the regularity of the time and lack of any "evidence whatever of the administrative difficulty of recording the time" "outweigh[ed] the brevity of the periods of time at issue"].)

7. Troester's Argument That Employers Will "Abuse" The *De Minimis* Rule Is Unfounded.

Troester argues that federal courts have "[w]arned" that the *de minimis* rule can be "[e]asily [a]bused" and have "[e]ven [s]earched for [w]ays" to avoid applying it. (AOB 35-36.) But the authorities he cites simply confirm the protective nature of the *Lindow* test, where, depending on how the facts of a specific case align with the relevant factors, trivial amounts of work time might or might not need to be paid. (*Lindow, supra*, 738 F.2d at pp. 1062-1063 ["amount of daily time," "administrative difficulty of recording small amounts of time," and "size of aggregate claim" are, *inter alia*, factors to consider and balance].)

Addison v. Huron Stevedoring Corp. (2d Cir. 1953) 204 F.2d 88, which Troester correctly states stands for the proposition that employers may not "arbitrarily" refuse to count small amounts of work time, is in accord. (AOB 36 [citing 29 C.F.R. § 785.47, which acknowledges *Addison* and outlines application of *de minimis* rule to FLSA wage claims].) In *Addison*, the Second Circuit found it "capricious" to simply disregard any workweek in which the recoverable amount "is less than $1.00," but permit recovery for any workweek in which it was $1.00 or more. (*Addison, supra*, 204 F.2d at p. 95; *Lindow, supra*, 738 F.2d at p. 1063 [citing *Addison* and noting that an employer cannot simply "compensat[e] one

worker $50 for one week's work while denying the same relief to another worker who has earned $1 a week for 50 weeks."].) Such an arbitrary result would not, of course, comport with the inquiry that both *Lindow* and Section 785.47 require. (*Lindow, supra*, 738 F.2d at pp. 1062-1063 ["[E]ven small amounts of daily time [must be paid] *unless that time is so miniscule that it cannot, as an administrative matter, be recorded for payroll purposes.*"], emphasis added; accord 29 C.F.R. § 785.47.)[10]

Thus, Troester's argument that adopting the *de minimis* rule will enable employers to "arbitrarily refuse to count hours worked" is incorrect. (AOB 36.) Employers would not be granted the discretion to do what *Lindow* and Section 785.47 expressly forbid. His argument that it "defies reason" "to pay an employee for four hours worked in one day" but not for "one minute [per day] over 250 days" fails for the same reason. (AOB 36.) It ignores the fact that it may be practical to record and pay the former but not the latter.

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[10] Moreover, when *Addison* was decided in 1953, $1.00 per week was more than an hour of work at the minimum wage. (5 ER 807-808.)

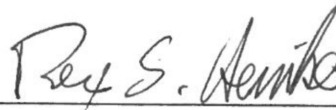
IV. CONCLUSION

For all the foregoing reasons, the *de minimis* test outlined in *Anderson* and *Lindow* equally applies to wage and hour claims under the California Labor Code.

Respectfully submitted,

Dated: January 24, 2017

AKIN GUMP STRAUSS HAUER & FELD LLP

By 

Rex S. Heinke

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CERTIFICATE OF COMPLIANCE

[Cal. Rules of Court, Rule 8.204(c)]

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Dated: January 24, 2017

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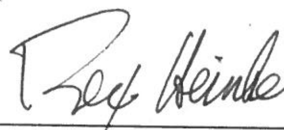

By ________________________________
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1999 Avenue of the Stars, Suite 600, Los Angeles, California 90067. On January 24, 2017, I served the foregoing document described as: **RESPONDENT'S ANSWER BRIEF ON THE MERITS** on the interested parties below, using the following means:

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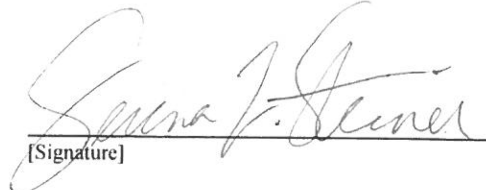
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