Case No. 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

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF THE CALIFORNIA RETAILERS ASSOCIATION IN SUPPORT OF DEFENDANT AND RESPONDENT STARBUCKS CORPORATION

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, the California Retailers Association ("CRA") respectfully requests leave to file the accompanying *amicus curiae* brief in support of Defendant and Respondent Starbuck Corporation ("Starbucks").[1]

CRA is a statewide trade organization representing all segments of the retail industry, including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail. CRA's members currently operate over 164,000 stores with sales in excess of $571 billion annually, and they employ over 2.75 million people – nearly one-fifth of California's total employment.

For 78 years, CRA's mission has been to provide effective representation of its diverse membership base through legislative, administrative, and judicial advocacy. It regularly files *amicus curiae* briefs and letters in this Court (and others) in cases involving employment law issues and other matters of importance to its members, such as in *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1; *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312; *Iskanian v. CLS Transportation of Los Angeles* (2014) 59 Cal.4th 348; and *Apple, Inc. v. Superior Court* (2013) 56 Cal.4th 128.

CRA and its members have a substantial interest in ensuring that the California Labor Code and related Wage Orders are interpreted and implemented in ways that are fair and practical. As such, CRA agrees with

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[1] No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3).)

Starbucks that the *de minimis* doctrine is a necessary feature of California wage-and-hour law. CRA writes separately to provide examples of real-life situations that implicate the *de minimis* rule, demonstrating why eliminating the rule would lead to absurd results, thus harming businesses, consumers, and employees themselves.

Dated: April 14, 2017

Respectfully submitted,
SIDLEY AUSTIN LLP

By: _____
David R. Carpenter
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ATTORNEYS FOR AMICUS CURIAE THE CALIFORNIA RETAILERS ASSOCIATION

AMICI CURIAE BRIEF

INTRODUCTION AND SUMMARY OF ARGUMENT

The phrase "punching the clock" is rooted in our conceptions of the early Twentieth-Century industrial workforce. Timekeeping systems in modern workplace have evolved in many respects. But they cannot eliminate the myriad contexts in which it remains highly impractical, if not impossible, to capture small amounts of time occurring before or after one's regular shift. Take, for example, the following illustrations:

- An assistant store manager regularly arrives fifteen minutes early for her shift. Before clocking in, she occasionally chats with her manager about the days' tasks in between reading personal emails or a book. On her way out of the store on her lunch break, she sometimes is momentarily stopped by a customer asking to be pointed in the right direction for a particular product.
- A customer service representative reaches his desk in the morning, turns on his computer, and then waits for it to boot up before "clocking in" through the computer's timekeeping software. Usually the computer boots up in seconds, although sometimes it can take a minute or two for updates to load.
- Employees at a warehouse clock out and pass through security at the exit, where occasionally they wait in line.

These examples all arguably involve "hours worked" under the California Labor Code because the employees are performing tasks for the employer's benefit or are subject to the employer's control. Yet as a matter of common sense, the time spent on these activities may be disregarded because it is so small and is impractical, or even impossible, to record.

That common sense approach is the essence of the *de minimis* rule. As observed in Starbucks' Answer Brief, the maxim that the law disregards

trifles has long been part of California statutory and decisional law. In the wage-and-hour context, the *de minimis* rule has been recognized by federal courts applying California law, the California Court of Appeal, and the Department of Labor Standards and Enforcement ("DLSE"). This Brief does not re-tread those legal arguments but seeks to amplify the practical and policy bases for preserving the *de minimis* rule in this context.

First, this brief reviews cases applying the *de minimis* rule to illustrate the myriad contexts relevant to the modern workplace in which the rule operates to achieve fair and reasonable results. As these cases show, the rule often applies to activities that are impossible to record or are inextricably intertwined with noncompensable commuting time or other personal activities. In other cases, the activities are so irregular and/or trivial that it would only clog the courts and unduly penalize employers if the failure to compensate for that time were deemed a violation.

Second, the *de minimis* rule properly balances the policy interests at stake. The Labor Code and related Wage Orders are intended to ensure that employees are fairly compensated without leading to absurd results. The well-established *de minimis* factors accomplish this by allowing employers to disregard only small amounts of time, and only in certain circumstances. Compelling employers to record and compensate employees for trivial amounts of time, even when it is highly impractical to do so, would only impose undue burdens and penalties on employers while generating costs that are passed on to consumers purchasing retail goods. Eliminating the *de minimis* rule also would burden employees themselves because it would induce employers to adopt ever-more rigid policies governing employee behavior, including personal activities, in or around the workplace. It does not serve the legislative purpose to create rules where any conceivable benefit to employees would be outweighed by the burdens ultimately imposed on them and the general public.

ARGUMENT

THIS COURT SHOULD CONFIRM THAT THE *DE MINIMIS* DOCTRINE IS PART OF CALIFORNIA WAGE-AND-HOUR LAW

Courts have long recognized that "[a]s a general rule, employees cannot recover for otherwise compensable time if it is *de minimis*." (*Lindow v. United States* (9th Cir. 1984) 738 F.2d 1057, 1062 [quoting *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 692, for proposition that "a few second or minutes of work beyond the scheduling hours … may be disregarded" as "trifles"].) In the wage-and-hour context, the *de minimis* rule was not developed based on any particular language in the federal statutes. Rather, it was developed as a "common sense" rule based in "just plain everyday practicality." (*Lindow*, 738 F.2d at p. 1063.)[2]

As a matter of both federal law and California law, courts apply the *de minimis* rule based on "the facts of each case," taking into account "the amount of daily time spent on the additional work," as well as the following factors: "(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*, 738 F.2d at pp. 1062-1064; see also *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 527 [applying *Lindow* factors]; Cal. Dep't of Labor Standards, DLSE Enforcement Policies and Interpretations Manual (rev. 2002) ¶¶ 46.6.4, 47.2.1 [adopting *Lindow* framework] [hereinafter "DLSE Manual"].)

Part A below provides examples of contexts implicating the *de minimis* rule and how courts have applied these factors to reach common

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[2] The Supreme Court's decision in *Anderson* was prior to the Portal-to-Portal Act amendments that modified the definition of compensable activities for purposes of the Fair Labor Standards Act. Plaintiff's brief fails to identify any material difference between California law and the federal law at the time *Anderson* was decided.

sense results. Part B elaborates on why *de minimis* rule is both necessary and sound as a policy matter.

A. Cases Applying the *De Minimis* Doctrine Illustrate Myriad Contexts in Which the Rule Operates to Promote Fairness and Avoid Absurd Results in the Modern Workplace

1. Logging into a Computer System

Modern timekeeping systems allow employers to record time to the minute or even the second, but no timekeeping system can capture the time it takes to access the system itself. Many of CRA's members do not use old-fashioned punch clocks; rather, their employees log in through a computer network or point-of-sale system at the store. In retail stores, this process may mean that employees occasionally may have to wait to clock in – if, for example, the store is busy and all of the registers are in use with customers. For office jobs, timekeeping systems are often built into software on the employee's computer, and that may require the employee to wait for the computer to boot up before logging in. For field representatives, their shifts often start when they arrive at the location of their first appointment, but they may need to log onto a computer system in advance to receive their first assignment or once they reach their location.

It may sound far-fetched that an employee would sue over the time it takes for a computer to boot up or to log onto a network. But that fact pattern has been the subject of multiple lawsuits. (See, *e.g.*, *Gillings v. Time Warner Cable LLC* (9th Cir. 2014), 583 Fed.Appx. 712; *Chambers v. Sears, Roebuck and Co.* (5th Cir. 2011) 428 Fed.Appx. 400, 404, 418; *Faust v. Comcast Cable Commc'ns Mgmt., LLC* (D. Md. July 15, 2014) No. WMN-10-2336, 2014 WL 3534008; *Waine-Golston v. Time Warner Entmt-Advance/New House P'ship* (S.D. Cal. Mar. 27, 2013) No. 11cv1057, 2013 WL 1285535; *Cornn v. United Parcel Serv., Inc.* (N.D. Cal. Aug. 26, 2005) No. C03-2001, 2005 WL 2072091.)

For example, in *Chambers*, the court held that the time it took field technicians to look up their morning assignment or log in after reaching their first location was *de minimis*. (428 Fed. Appx. at pp. 417-418.) The court explained that such processes took only a "minute or so," were "administratively difficult to keep track of because ... [they were] of such fleeting duration," and they could not practically be segregated from time "merely commuting, which is non-compensable." (*Ibid.*)[3] *Cornn* similarly found that delivery drivers' procedure for punching into their handheld systems to register the start of their shifts – which took only "a matter of seconds" – was *de minimis* under California law. (*Cornn*, 2005 WL 2072091, at p. *4.)

Gillings, *Faust*, and *Waine-Golston* all evaluate the *de minimis* rule in the context of call-center jobs. In *Waine-Golston*, the court described a process in which employees had to wake up their computer by pressing "control-alt-delete," entering their log-in ID, and then clicking on the icon for Avaya (the integrated phone and timekeeping system) – a process that took "less than a minute" or a "minute, two minutes tops." (*Waine-Golston*, 2013 WL 1285535, at p. *4.) At the end of the shift, employees would close Avaya, which clocked them out, and then would have to spend a few seconds closing or locking the computer. The court observed the employer previously had used a standalone wall clock for the timekeeping system, but integrating the timekeeping system with other computer software reduced the risk of off-the-clock work by making sure that employees were automatically logged-in when they began taking customer calls. (*Id.*) The court ultimately held that the one to two minutes of time spent logging on and off of Avaya was *de minimis* and entered summary

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[3] Absent special circumstances, commuting time is also non-compensable under California law. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575; *Overton v. Walt Disney Co.* (2006) 136 Cal.App.4th 263.)

judgment on the basis that it was too administratively difficult to record the additional time. (*Id.* at p. *6; *but cf. Gillings*, 583 Fed. Appx. at 714-715 [agreeing that the boot-up process should be evaluated under the *de minimis* framework under California law, but finding a triable issue on how to balance the *Lindow* factors on the record before it, which indicated the process could take six minutes daily].)

In *Faust*, the court addressed such claims in the context of class certification but similarly emphasized variation in amount of time required to complete the boot-up process. (*Faust*, 2014 WL 3534008, at pp. *13-14.) *Faust* observed that many employees arrived early, initiated the boot-up process, and then "engaged in a variety of activities between the time they logged into their computers and the time that they begin taking customer calls." (*Ibid.*) *Faust* also highlighted the relationship between the *de minimis* rule and the "continuous workday" rule. If booting up the computer triggered the start of a shift, that would lead to the absurd result that employees who arrive early can "spend 30 seconds booting up their computer, and by doing so, transform the next 15 or 20 minutes of personal business or activity into compensable time." (*Id.* at p. *14.)

2. Passing Through Security

Time spent passing through security is another context in which the time is highly impractical, if not impossible to track, and can be inextricably intertwined with noncompensable pre- or post-shift activity. Courts have therefore applied the *de minimis* rule in cases alleging negligible amounts of time spent passing through security lines. (See, *e.g.*, *Busk v. Integrity Staffing Solutions, Inc.* (9th Cir. 2013) 713 F.3d 525, 532 [holding time spent passing through security on way to lunch was "relatively minimal" and *de minimis*], *rev'd on other grounds* (2014) 135 S. Ct. 513; *Alvarado v. Costco Wholesale Corp.* (N.D. Cal. June 18, 2008) No. C 06-04015, 2008 WL 2477393, at p. *3 [applying the *Lindow* factors and

holding that plaintiff's claims for unpaid wages under California law were *de minimis* and, therefore, not compensable].)

For example, the plaintiff in *Alvarado* worked at a Costco warehouse in California, where employees carrying personal bags were subject to a bag check before leaving at the end of their shift. Plaintiff testified that after clocking out, she spent "several seconds," and occasionally several minutes, waiting for security checks before exiting the warehouse. (*Id.* at p. *3.) The record indicated that "employees could (and often do) participate in noncompensable activities after the end of their shift but before leaving the warehouse, such as shopping, attending the restroom, socializing, walking time and other personal activities." (*Id.* at p. *4.)

The court held the time plaintiff spent waiting for security checks at the end of her shift was *de minimis* because of the "administrative difficulties" inherent in trying to isolate the time spent in the security line from other noncompensable activities employees engaged in after their shift. (*Ibid.*) Even repositioning the time clock by the exit door—a suggestion proposed by the plaintiff—would not allow Costco to more accurately measure the amount of time spent in security because it would not isolate the time spent in the security line from other noncompensable activities employees engaged in after their shifts. (*Ibid.*)

The court in *Cervantez v. Celestica Corp.* (C.D. Cal. 2009) 618 F.Supp.2d 1208, applied a similar analysis in denying plaintiff's motion for summary judgment as to time spent passing through security upon entering and exiting the employer's facility. (*Id.* at pp. 1216-19.) The court agreed with plaintiffs that, under California law, the time spent in a security line was potentially compensable because employees were subject to the control of the employer during that time. (*Id.* at pp. 1214-1215.) Nonetheless, the court found that the *de minimis* rule could apply. The court rejected the plaintiff's argument that "the *de minimis* defense is an outdated principle

and related only to the FLSA, not California law." (*Id.* at p. 1217) The court then cited evidence that some plaintiffs "spend as little as one minute passing through security before their shift starts," and that "it would be difficult and expensive to capture and compensate Plaintiffs for their pre-shift time spent waiting in line to pass through security and clock in." (*Id.* at pp. 1217-1218.)

Cervantes highlights that the "administrative difficulty" factor takes into account not only the costs and burdens on the employer, but also the burdens on employees themselves. The court cited evidence by the defendant that if it "were required to account for each second of time associates spend passing through security or clocking in or out, it would have to impose substantial restrictions on associates with respect to the time they could arrive at or leave [the defendant's] facility, as well as their activities while present on the premises." (*Id.* at p. 1219.)

3. Other Examples Applying the Rule to *De Minimis* Pre- or Post-Shift Activity

In the modern workforce, non-exempt employees perform a wide range of jobs beyond the paradigmatic examples of retail sales clerks or assembly-line workers. Modern white-collar positions like store managers or representatives who work in the field are also frequently considered non-exempt under California law. As a result, there are innumerable additional situations in which an employee's activities surrounding the beginning or end of a regular shift – or during breaks – can implicate the *de minimis* rule because, among other things, they fall outside the time that can be practically recorded, are too irregular, and/or are too intermingled with non-compensable activities.

Take the Ninth Circuit's decision in *Lindow v. United States* (9th Cir. 1984) 738 F.2d 1057. Plaintiffs were power plant operators, control room operators and general foreman who typically arrived to work 15

minutes early each day. (*Id.* at p. 1059.) Plaintiffs sometimes used part of this time to do work-related activities like reading the log book and exchanging information, but "[f]or the rest of the time, … they engaged in social conversation and performed non-work related activities." (*Ibid.*) The Ninth Circuit noted "the uncertainty of how often employees performed the tasks and of how long a period was required for their performance," as well as the "wide variance in the amount of pre-shift time spent on compensable activities as opposed to social activities." (*Id.* at pp. 1063-64.) Although plaintiffs could spend several minutes reading the log book and exchanging information, "they did not always perform these duties before their shifts," and the employer would therefore "have had difficulty monitoring this pre-shift activity." (*Ibid.*).

The Second Circuit applied similar reasoning in *Singh v. City of New York* (2d Cir. 2008) 524 F.3d 361. There, the plaintiffs were fire alarm inspectors who were required to carry fifteen to twenty pounds of inspection files during their commutes from their home to work and back, a responsibility which sometimes increased the time of their commute. (*Id.* at p. 365.) The Second Circuit held that any time added to their commute because of the inspection files was *de minimis*: "[A]s a practical administrative matter, it would be difficult for the City to record and monitor the additional commuting time for each inspector. The task of creating a reliable system to distinguish between ordinary and additional commuting time for each individual inspector on a daily basis would be challenging, if not impossible." (*Id.* at p. 371.) Moreover, the aggregate claims generally amount to no more than a few minutes on occasional days, making it so irregular that it did not need to be compensated. (*Id.* at pp. 364, 371-372; see also, *e.g.*, *Green v. Lawrence Serv. Co.* (C.D. Cal. July 23, 2013) No. LA CV12-06155, 2013 WL 3907506 [holding that miscellaneous administrative tasks that employee performed at home

accounting for less than one hour of time over a three-year period were *de minimis* and not compensable].)

For CRA's members, the *Lindow* scenario is readily applicable to store managers, assistant managers, and shift supervisors who are non-exempt but nonetheless bear responsibility for coordinating tasks at the store. Such employees are particularly likely to be approached by customers or other employees before or after their shift, or while off-the-clock on a lunch break. *Singh* and *Green* are similarly applicable to a wide range of jobs where employees may work in the field or occasionally respond to email correspondence outside their regular shift time.

The facts of the present case also fit comfortably within the purpose of the *de minimis* doctrine and cases applying it. Plaintiff was a shift supervisor whose duties occasionally included closing and locking up the store. Because Starbucks' timekeeping system was integrated into the point-of-sale systems, there was no way of practically recording the fleeting and trivial time spent setting the alarm or locking the front door after clocking out. To the extent Plaintiff may have occasionally assisted other employees to their car or let them back into the store, that is the kind of activity that also falls within the *de minimis* doctrine because it is an irregular activity and impossible to monitor.

B. The *De Minimis* Rule Properly Balances the Underlying Policy Interests and Avoids Absurd Results that Would Harm Businesses, Consumers, and Employees

1. The *De Minimis* Factors Balance Practicality with Fairness to Employees

The purpose of the Labor Code is to protect and fairly compensate employees. (*See* Lab. Code § 90.5(a).) But this Court has long recognized that, in interpreting a statute or regulation, "we avoid a construction that would produce absurd consequences, which we presume the Legislature did

not intend." (*Pineda v. Bank of Am., N.A.* (2010) 50 Cal.4th 1389, 1394 [quotation omitted].) In *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th 1, 18-19, for example, the Court recently evaluated the "suitable seats" requirement under Wage Order 4-2001 and Wage Order 7-2001, and it adopted a "reasonableness standard" that considers the "totality of the circumstances," including the "feasibility and practicability" of providing seats in particular contexts.

Here, the applicable Wage Orders define "hours worked" as time that the employee is suffered or permitted to work, or otherwise is subject to the employer's control. *See Morillion*, 22 Cal.4th at p. 582. Because the concepts of "work" and "control" are broadly understood, the examples above – such as booting up one's computer or passing through a security checkpoint – potentially could qualify. The *de minimis* doctrine, however, operates as a reasonable and practical construction of the applicable Wage Orders. It allows a court or trier of fact to find, under the totality of the circumstances in a given case, that otherwise compensable activities do not rise to the level of "work" or being "subject to the control of an employer" if they are *de minimis* and the *Lindow* factors are satisfied. This interpretation allows courts to continue to apply a relatively broad definition of "work" and "control," without creating absurd results.

Employees are protected because the rule does not allow employers to arbitrarily disregard even small amounts of time if it is practical to record the time, and the rule is less likely to apply if the time is greater or more regular. (See, *e.g.*, DLSE Manual (2002) § 47.2.1.1 ["An employer may not rely on this policy to arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him."]; *Gomez*, 173 Cal.App.4th at p. 527 [denying summary judgment because amount of time customer service representative

spent returning calls after his shift, in the aggregate, was not *de minimis*].) That is, employees reasonably expect to be compensated for meaningful amounts of time that they spend working or are subject to the employer's control, and thereby deprived of the ability to pursue their own personal activities. But employees have no reasonable expectation to be compensated for every split second or trivial inconvenience associated with having a job.

2. Abolishing the *De Minimis* Rule Will Impose Undue Burdens and Penalties on Employers, and Ultimately Harm Consumers and Employees Themselves

While maintaining the *de minimis* rule would not impair employees' legitimate interests, abolishing the *de minimis* rule would have a significant impact on employers. California employers have widely adopted policies aimed at ensuring that, to the greatest extent practical, all work time is recorded and employees are prohibited from working off the clock. At the same time, California employers have long relied on the guidance from the DLSE and general industry practices that *de minimis* amounts of time that are administratively impractical or impossible to record can be disregarded.

Changing that policy now would expose employers to a new wave of lawsuits and substantial backward-looking penalties that, in many cases, would far exceed the allegedly lost compensation. By way of example, one minute of off-the-clock time occurring once a pay period could amount to approximately $0.18 in wages but as much as $2,520 in penalties.[4] That is a penalty-to-wage ratio of 14,000 to 1. And that is only for one employee.

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[4] This calculation assumes an employee is paid the California minimum wage of $10.50 per hour, and the penalties are calculated over the maximum of 30 penalty days. Accordingly, an employee paid $10.50 per hour who works 8 hours per day will make $84 per day, and $2,520 in a 30-day period. (*See* Lab. Code § 203.)

On a going-forward basis, abolishing the *de minimis* rule would lead to undue burdens and absurd results. For example, if a manager notices an employee spending thirty seconds helping a customer after a shift, the manager and/or employee would be required to fill out an exception report, which would likely take longer than the amount of time spent helping the customer. If this scenario occurs while the employee is on a lunch break, that would constitute an "interrupted" break entitling the employee to one hour's premium pay for thirty seconds of "work."

For other kinds of tasks that cannot practically be recorded, employers would have to devise new timekeeping systems or use rough estimates that, given the risk of such draconian penalties, would overcompensate the employees for such activities. In many cases (such as with security checks or tasks intermingled with commuting), employers would be required to adopt policies that effectively pay employees for personal activities occurring before or after their regular shift.

Given litigation expenses, increased administrative burdens, and the inevitability that employers will have to compensate employees for intermingled non-compensable activities, the costs associated with abolishing the *de minimis* rule will far exceed any alleged value of the *de minimis* "work" performed by employees. Such inefficient and impractical rules also harm the general public because of their burden on businesses and because such costs are inevitably passed onto consumers in the form of higher prices.

Abolishing the *de minimis* rule also would hurt employees themselves. That is because it would compel employers to adopt increasingly restrictive policies governing employee behavior. For example, if employees' arriving to work early creates a risk of doing incidental *de minimis* work, then a rational employer may prohibit them from spending any time in or around the store when not on the clock. If

every email correspondence constitutes "work," employers may insist on notifying employees about schedule changes only when they arrive at the store, even though employees may have preferred to receive an email or text alert earlier.

Similarly, if an employer (like in *Alvarado* or *Cervantes*) must put "on the clock" any form of security check, that would require the employer to compensate employees for all time preceding the check – even activities that are personal and otherwise non-compensable. To minimize such time, the employer may adopt restrictions on how long an employee is permitted to remain in the facility after their regular shift ends. For example, employees who usually wait in the store after their shift for the bus (for comfort or safety) could be required to exit the store immediately. Employees who are interested in doing personal shopping in the store may be prohibited from doing so. Employers also could seek to avoid or minimize the need for security checks by prohibiting employees from bringing bags or personal items into the store altogether.

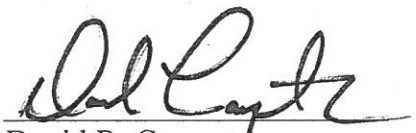
Employees want to be fairly compensated and protected from abusive policies. But it benefits no one to have employees treated like children whose every movement must be regulated and monitored. Yet, to avoid liability for what would otherwise be considered *de minimis* time, that is what would have to occur. Abolishing the *de minimis* rule will ultimately impose irrational and unwanted burdens on employers and employees alike because the only way for employers to ensure employees are compensated for every second of time worked is to regulate the minutia of an employee's time at or around work.

CONCLUSION

Accordingly, for the reasons set forth above and in Starbucks' brief, the Court should confirm that the *de minimis* doctrine is a recognized component of California wage-and-hour law.

Dated: April 14, 2017

Respectfully submitted,
SIDLEY AUSTIN LLP

By: 

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CERTIFICATION OF WORD COUNT

I certify that according to the word count generated by Microsoft Word, the program used to prepare this brief, this brief contains 4,370 words.

Date: April 14, 2017

David R. Carpenter

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss
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I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013-1010, mbrown@sidley.com.

On April 14, 2017, I served the foregoing document described as: **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF THE CALIFORNIA RETAILERS ASSOCIATION IN SUPPORT OF DEFENDANT AND RESPONDENT STARBUCKS CORPORATION** on all interested parties in this action as set forth on the attached service list.

☒ (BY U.S. MAIL) I served the foregoing document by U.S. Mail, as follows: I placed a true copy of the document in a sealed envelope addressed to each interested party as shown on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. I am readily familiar with Sidley Austin LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 14, 2017, at Los Angeles, California.

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